Vol. IV

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1920

No. [redacted]101

THE COCA-COLA COMPANY, PETITIONER,

vs.

THE KOKE COMPANY OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 30, 1919.

CERTIORARI AND RETURN FILED JULY 21, 1919.

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(Deposition of J. M. Smith.)

Cross-examination.

I had a few calls for the specific drink Matthews Cola. They ask for Dope. It is not marked Dope, but that is the way they bill it to me as Dope. There is a difference in the profit in favor of Matthew's syrup, it costs less **[913]** than Coca-Cola. Some customers know about the Matthew's syrup and some do not know there is such a drink on the market. My customers know there is such a drink as Coca-Cola on the market. I do not believe I ever heard anyone ask for Coca-Cola out at the ball park, because it is such a common expression with men and boys, I do not remember that I ever heard anyone specify Coca-Cola. The word Dope I think applies to any cola drink, that is my honest opinion. Very few calling for Koke or Dope have ever heard of it. I do not know whether people asking for dope expect to get Coca-Cola, Matthew's Cola, or some other cola. I do not know what they mean or expect to get. This drink of Matthew's is advertised as Dope. They left me some advertising, they advertised it as Dope. I am not sure, but I think that is it. I do not remember what was on it, it was a little pamphlet or catalog or something, a trade proposition. I have Coca-Cola advertisements and signs, "Drink Coca-Cola." I have not any on the fountain, that is up on the front of the building. I have not any signs of Matthew's drink. If anybody at my place of business has served Coca-Cola and Koke and Dope out of the same container it must have been a mistake, because we have had two different contain-

(Deposition of J. M. Smith.)

ers, one we keep Coca-Cola syrup in and the other this Matthew's mixture of syrup or Dope. I have not been out of this Matthew's mixture for sixty days. Mistakes are liable to happen. I instruct the dispensers where people ask for Coca-Cola to be sure and give Coca-Cola. I give that instruction for the simple reason that there is no one in that immediate neighborhood that serves pure Coca-Cola without some kind of mixture in it, that is, I have been told that. I could not say positive, but I do sell Coca-Cola and have built up quite a nice little trade on it, and I also give instructions that when they come in and ask for a Dope to give some of these other syrups because of the difference in profit. These products are very similar in appearance.

Mr. HIRSCH.—I now offer in evidence as Complainant's Exhibit No. 12 to the testimony of Mr. B. Freed, this paper.

Deposition of R. K. Smith, for Defendants.

R. K. SMITH.

Direct Examination.

Twenty-eight years of age; live in Nashville for the past five months; **[914]** before that I lived in Cincinnati, Ohio, and before that Chattanooga, Tennessee. At the present time I am in the soda-water business at United Cigar Stores Company, as head dispenser. I have been dispensing soda water off and on for the past twelve or thirteen years. I am at the fountain now and can hear the names people use in asking for drinks they want. I am not

(Deposition of R. K. Smith.)

at the fountain at all times, so far as that is concerned, but I take a regular watch. We are handling now a general line of drinks such as you find at all soda-fountains. We handle Coca-Cola that is the only one. We have people come into our fountain and ask for Koke and Dope. If it should be a regular customer that I have been in the habit of serving at all times and know what he drinks, I give him Coca-Cola if that is what he drinks, otherwise if he asks for Koke or Dope, I ask if he wants Coca-Cola. The words Koke and Dope mean as applied to soda-fountain beverages. I think that dope would mean any kind of stimulating drink, or caffeine such as that, headache medicine, or Coca-Cola, as a lot of people call that meaning Coca-Cola when they say Dope. I have known of Fletcher's Cola and Dope; they are about the only two colas that I have seen; I have heard of more than that, I suppose, but not very much. If a customer came in and asked for a Koke or a Dope I do not know anything he likes and he has not been a regular customer, why, I would give him the one I made the most on. If I had a dope and he asked for dope, I would be giving him what he is asking for. Dope in my opinion does not exactly specify Coca-Cola. I have people come in and ask for Dope when they want Capudine or any headache medicine, for instance, Bromo-Seltzer. On two or three different occasions I have found that one barrel of Coca-Cola would not exactly taste as the last barrel I used. The last time I remember of having anything like

(Deposition of R. K. Smith.)

that to occur was in Cincinnati, and at the time we got a fresh barrel of Coca-Cola in, we called up the Coca-Cola man there, the manager at the office at Cincinnati and he explained to me that it was possibly in mixing my water with it that that was the cause of the taste being [915] different. It had a little bit different taste to it to what the usual run of Coca-Cola does. It was in the mixing of the syrup, I suppose, because our water was the same we had been serving all the time. We usually keep our soda-fountain carbonated at between 135 and 150 lbs. The low carbonation makes any drink rather flat, and is not as sparkling and as bi*ght*y as high carbonation would be. The same sample of syrup and made a drink at one soda-fountain where it was highly carbonated, and made it at another one with a lower carbonated water, there is no doubt but there would be a difference in taste, there would not be as much gas in one as there would be in the other. It would be more flat. At the different soda-fountains where I have worked they all do not have the same uniform carbonation. I have had people come in and ask for a Dope and then laugh and say give me a Coca-Cola. I do not know whether or not among our trade the fact that there are other cola syrups on the market and dispensed at the soda-fountains in Nashville, is well known. There is no doubt but that it is known among some people. We have regular trade and transient trade also; more of a regular trade than what you would call transient. When they call there as a rule we know what they want. I

(Deposition of R. K. Smith.)

heard the names Koke and Dope applied to soft drinks for the past eight or ten years, I suppose. I have not sold anything except the straight Coca-Cola. I have no other drinks similar to that one, and, as I said awhile ago, people come in and ask for a Dope and a great many times they mean a headache beverage, something like that; a caffeine drink or something stimulating. I have heard of Celery-Cola. I think about the first time I heard of Celery-Cola was about nine or ten years ago. It is similar to Coca-Cola, in taste and color. I do not remember the first time I heard the word Dope or where I heard it. I remember an occasion where I called in and asked for a Dope, at Harrison, Tenn., and getting a drink. That has been seven or eight years ago that I was out driving with a friend of mine and asked for a Dope, and got a bottle of dope from a little country store. **[916]** I drank it; it tasted very similar to Coca-Cola. It was labeled Dope. I know what caramel is; we had a caramel coloring; it is really a burnt sugar coloring. It is used to color up vanilla and to make any of the drinks darker provided you want to; it is used mostly for vanilla syrup. It is the only coloring that I know of that will bring out the tone right on account of the color that vanilla should be. It is much lighter than Coca-Cola in color. I think I could tell the difference between a sample of vanilla extract and a sample of Coca-Cola extract if colored to what I think vanilla ought to be colored. I have seen vanilla too dark in my opinion. It is not customary to color

(Deposition of R. K. Smith.)

with caramel in the first place, and it should be that color. I have heard of Cherry Cola; Fletcher's Cola and Star-Cola. I never heard of Rye-Ola. Root beer is dark, very much like Coca-Cola, if anything it might be a little darker. I believe I could tell a glass of each apart, I do not know, I never tested it out that way. I could tell a Coca-Cola barrel if it was labeled Coca-Cola. If it was not labeled possibly I would think it was a Coca-Cola barrel because they are red barrels. I have not seen the wagons delivering the syrups to the soda-fountains around town. It is not customary in this city for soda-fountain people to leave their empties setting out on the sidewalk in front of their places.

Cross-examination.

I saw once a ten-gallon keg that contained a syrup that was called Dope. I do not know who made it. It has been something like two years ago; it was in Ohio. There is no doubt there are men who mean Coca-Cola and ask for it under the name of Dope; use Dope as a nickname for Coca-Cola, and the word Koke too; they use that for a nickname for Coca-Cola. That has been so for sometime in the south. The color depends upon the amount of caramel you use. You can make a different drink, take a white drink and add caramel coloring and you can get anywhere from a pale yellow to a black. That circumstance I related at Harrison, Tenn., when I asked for Dope I expected to get a Coca-Cola.

Redirect Examination. [917]

Out in the country that way we were willing to

(Deposition of R. K. Smith.)

drink anything we could get. It gave satisfaction. At that time anything would give satisfaction. I expected to get Coca-Cola because I had been there at Chattanooga and the rest of the boys around, you know, call it Dope, and had that in my mind when I asked for Dope. I have gone into a near-beer stand or saloon and got a glass of beer, I have asked for it as a glass of foam, a scuttle of suds, or something of that sort. I expected to get whatever they were serving when I asked for the glass. I usually like Schiltz when I could get it in a bottle. If I had been accustomed to get Schlitz beer when I went into a saloon and asked for a glass of foam, I would have Schlitz beer on my mind when I asked for it.

Deposition of F. H. Willis, for Defendants.

F. H. WILLIS.

Direct Examination.

Age eighteen next April; live in Nashville, Tennessee; have lived there two years and two months; occupation, soda dispenser at Ha Ha Store, #3 Arcade, Nashville, Tenn. We are dispensing a general line of soda drinks. Other cola drinks we have besides Coca-Cola is Candy-Cola. The color of Candy-Cola is very similar to Coca-Cola. I do not drink it myself. I have tasted it but I could not hardly tell the difference myself between Coca-Cola. We have customers come into our soda-fountain and ask for a Dope or a Koke. I give them a cola, Candy-Cola. I have them come in and ask for a Coca-Cola. When they ask for Coca-Cola I give

(Deposition of F. H. Willis.)

them Coca-Cola. When a customer asks for a Koke or a Dope my understanding is that he wants just some cola, that we might have, that we dispense there. When they ask for Koke and Dope and I serve them Candy-Cola, I consider we are giving them what they ask for. In some cases I regard Koke and Dope as calls for Coca-Cola exclusively and some cases I do not. I have a regular line that calls for Coca-Cola and likewise for Dope, and I serve them. The Candy-Cola is always served for Dope or Koke. Last Monday I believe, a customer thought I was giving him the Cola instead of Coca-Cola, he clerks down at the Western Union. I do not know of but just two cola drinks that I have had anything to do with, that is Fletcher's and Candy-Cola. We have always dispensed Fletcher's [918] Cola. They ask for that as Dope and Koke. I do not regard the names Koke and Dope as the names of a particular cola drink.

Cross-examination.

Fletcher's cola was given when people asked for Dope or Koke. We did that because we made more money on it. I do not know the price of Candy-Cola, whether it is more or less than Coca-Cola. Matthews makes Candy-Cola here in Nashville. I do not know how long I have been using it, nearly seven months I believe. Some of our customers know we are handling Candy-Cola. I do not know whether the general public know of Candy-Cola or not. I never saw any advertising of Candy-Cola. I do not know whether the people who come into

(Deposition of F. H. Willis.)

our store and ask for koke or dope expect to get Candy-Cola, but they expect to get some kind of a cola that we serve there. I do not know what they except to get. I give them Candy-Cola. I never sell Coca-Cola when Koke or Dope is asked for. I have instructions to sell Candy-Cola when Koke or Dope is called for. We do not sell Candy-Cola when Coca-Cola is asked for. These drinks are kept in separate containers in our fountain. When a person comes in and asks for a Coca-Cola I have never given it out of this container containing Candy-Cola, without explaining the difference, I tell them we do not have Coca-Cola in right then but we had a Cola and if they wanted to know who made it, some of them, I told them. I might have served Candy-Cola in response to calls for Coca-Cola. I am not positive I was on duty on Monday, February 8th between 10 and 11 o'clock in the morning. I do not remember about two ladies calling at that time and asking for two glasses of Coca-Cola and the drinks were served to the ladies who sent them back and said you had two kinds of Coca-Cola. We have not but one pump, that is located about the middle of the fountain. (Witness draws the diagram.) In the middle is the pump, that is what I keep my Candy-Cola in. Starting at the dispensers left, call the first one #1, the second #2, three #3 and four #4, then getting on the dispensers right the first—the middle one is #5 and then on the dispensers right the first is #6, next #7 **[919]** and next #8 and next #9. Candy-Cola is at #5. Coca-

(Deposition of F. H. Willis.)

Cola is 3 and 6. We buy our Coca-Cola all from Spurlock-Neal. I have not the least idea how much we buy, I do not do the buying. We did buy in five and ten gallon kegs. We have been buying it recently a gallon at a time. #5 is labeled Coca-Cola and we keep Candy-Cola in the Coca-Cola jar. #2 I have pineapple syrup in it and never had Coca-Cola syrup in that. Coca-Cola is in #3 now; about a month ago I started putting it in there. Before that it was in #6. We had Coca-Cola in #6 a month ago and now we have got it in #6 and #3. In #7 we keep simple syrup, have kept it there about seven months. I do not know what they kept in there before I went there. I am positive simple syrup has been kept in there for the past month and neither Candy-Cola nor Coca-Cola has been in there. I have worked at The Ocean. We served Coca-Cola there when people asked for koke or dope, shot in the arm, or what else they called them, I was instructed to give Coca-Cola. (Offered in evidence as Complainant's Exhibit #13 to the testimony of Mr. Frank Willis.)

Deposition of F. C. Dorider, for Defendants.

F. C. DORIDER.

Direct Examination.

Age, fifty-five years. Been engaged most of my time in the confectionery and restaurant business. Live here in Nashville; have lived here twenty-seven years. I was first with C. H. A. Goertner for two years and then, I think, about twenty-four years

(Deposition of F. C. Dorider.)

with W. E. Sidebottom. We had a soda-fountain in our place of business when I was a partner with Sidebottom. We had most everything that is sold at a soda-fountain. I know J. C. Mayfield in a business way. I bought goods from him, some kind of goods with a Cola name to it, I cannot recall just now; Celery-Cola, I believe. It was a syrup for a soda-fountain drink. My impression is I first began to buy that Celery-Cola from him 12 or 15 years ago, I cannot recall exactly. We handled different kinds of Cola, Cola-Ade, Celery-Cola, Coca-Cola, and a good many of those colas, I cannot recall them. Mr. Sidebottom did most of the buying; if I bought any Koke I do not remember about it. Cola drinks besides those [920] I have mentioned are Star-Cola, Kola-Ade, and maybe some others. I have heard of Wine of Coca. It was a fountain drink; I do not think we ever handled it. These drinks came to us in large barrels, and some in kegs. I do not remember the color. I do not remember whether they were simply varnished or whether they were red; it strikes me, though, they had some kind of paint or varnish. Sidebottom attended to that, and we would get a lot of that stuff in the store-room and use it up and I would never see it at all. I was about the soda-fountain frequently myself so I would hear the names people used in asking for the drinks. I was up in front—the office was up in front right across from the soda-fountain. I have heard customers come in and ask for Koke or Dope. Well, if we had a customer that was drinking Coca-Cola, we natur-

(Deposition of F. C. Dorider.)

ally gave him Coca-Cola when he called for Dope. We had Celery-Cola—and when they called for dope and we knew they had been in the habit of drinking that we gave them Celery-Cola; we gave them Celery-Cola or Cola-Ade, as a great many of them were in the habit of calling for Dope like they do right now. Celery-Cola had a Celery flavor to it; they were practically the same, but a difference in the taste. If you set a glass of Celery-Cola up on the fountain and a glass of Coca-Cola you could tell by drinking from them which was which. They were very much alike in color. I never heard of any kicks. Of course the boy at the fountain is supposed to know what he is giving out to them; if they called for Dope and he did not know what they wanted, he would ask. If anyone came in and asked for Dope, I would ask him what he wanted and I would give him what he wanted. Some of the names they called for were Kola-Ade, we sold a good deal of Kola-Ade for awhile. Celery-Cola, Coca-Cola, whatever cola we had. We had customers come in and ask for a Dope and when I asked him what he wanted, he would reply that he wanted a Kola-Ade, every day they done that. Celery-Cola is what the most of them said they wanted. I am not now in business with Mr. Sidebottom. It seems to me like we handled Celery-Cola for at least twelve years anyway. I think we were handling it when we dissolved partnership. We began handling Kola-Ade I think about 8 or 9 years [921] ago. I think we handled it about 2 years and then quit. When a cus-

(Deposition of F. C. Dorider.)

tomer would come in and ask for a Dope or a Koke I do not consider he had made a definite and specific request on me for Coca-Cola alone, not unless we knew he was drinking it; I mean a regular Coca-Cola drinker, that I knew wanted Coca-Cola. The word dope means, well, I suppose the Cola people are supposed to give people the impression that they put Cocaine in it, and I think the word dope came from that; I don't know whether the rest of them did or not, but I always thought they did. The word dope as applied to soda-fountain drinks, means no particular drink. We consider it applies to these different drinks, like Kola-Ade, anything with the name Cola to it. I think they have been serving Star-Cola the last year or two at the Ball Park. Most everybody calls it dope; "Give me a dope, boy." I suppose they know what they are getting; I think there is something on the bottle to indicate what it is. I never noticed the bottle carefully. I hear lots of the boys dispensing Star-Cola calling "Dope," some say Star-Cola and some say Dope and different kinds of things. These words Dope and Koke are used in the trade to designate cola drinks as a class. I heard these words Koke and Dope fifteen or eighteen years ago, I reckon. I think during that time they have had the same meaning that they have now. If a customer fifteen or eighteen years ago would come into our soda-fountain and ask for a dope, if we did not know what he wanted we would ask him what he wanted; we considered two or three of them dopes.

(Deposition of F. C. Dorider.)

Cross-examination.

I have known of Coca-Cola, I think, about fifteen years; I think that is along about the first one in the Cola line. I remember definitely people coming into our place of business and asking for a Dope or a Koke and me asking them what they wanted. It happened frequently. Mr. Sidebottom and I were together for twenty-one years. We did not have a soda-fountain all that time. I think we had a fountain for about eighteen years, perhaps, at the beginning we did not have any. We would not always ask what they wanted; some customers would come in and call for it that we knew what they wanted to drink. [922] That was always the instructions we gave the dispenser. Some of them would call for Kola-Ade, some would ask for a dope or a koke and some did not. Kola-Ade is made in Atlanta, I think. I do not know whether everybody knew about Kola-Ade or not, we knew it and advertised it. Stencilled it in our floor. I mean by the word trade "in the trade dope and koke mean a class," dispensers, owners and the public.

Deposition of W. M. Pollock, for Defendants.

W. M. POLLOCK.

Direct Examination.

Age, twenty-three; live in Nashville, Tenn.; have been here about five years; engaged in bottling business. We bottle all soft drinks and Coca-Cola and Pepsol. We bottle John D. Fletcher's Koka and Cola flavors. That is the only cola drink we bottle.

(Deposition of W. M. Pollock.)

The name of our concern is the Nashville Bottling Works. I have been connected with other bottling works. I have bottled other cola drinks. We bottled Coconola, Rye-Olo, Cay-Ola, Mi-Ola, Star-Cola, and bottled other drinks and I have had several samples of different drinks bottled at different places. I have heard of—I guess about 40 or 50, something like that, different cola drinks. I have known of other cola drinks ever since I have known anything about working at the bottling plants, that has been about eight years ago. I have been in the laundry business and I have worked in the bottling business ever since I have worked anywhere. I had a little restaurant; I was in that business about six months. I handled beverages there. I think I have handled Coca-Nola and Rye-Ola and I handled some bottled drink, bottled in Lewisburg; I do not remember what it was, some kind of a Cola drink, bottled there; I do not recollect the particular name of it, but they bottled some kind of a Cola drink. The color of the barrels I get the cola drinks in I am now bottling are red. I have gotten different cola drinks in red barrels; Gay-Ola was in red barrels when we bottled it if I am not mistaken; Coca-Nola was in red barrels I am quite sure. Diehl's Star-Cola is in red barrels. Almost all cola drinks I have ever bottled come in red barrels; Coca-Cola barrels are redder barrels, their barrels have a gloss; they use a glass instead of these cheap barrels; these other [**923**] drinks use a kind of cheap paint; the only ones I ever bottled used a kind of cheap paint and it made a dull

(Deposition of W. M. Pollock.)

color. I could tell the difference between these other barrels and the Coca-Cola barrel if I saw them together. I will tell you how I have got it down; at the house we buy all kinds of barrels and generally paint them over; take them back there and wash them off and taking and comparing one with the other, and looking at the difference between the paint of one and the other people use, they use a better paint than we do. We get our paint from Warren Paint & Color Co., a Nashville concern. We use amber color bottles. We did bottle a cola drink while I was at Shelbyville at the bottling works there in a lighter bottle, but the people did not believe it was a cola drink because we put up Ginger Ale and put up Cream Soda in the same colored bottle as that and they would not drink that, and we changed and got us a dark bottle to make it so people would think it was a Cola drink. We first bottled Rye-Ola in light bottles and put it in dark bottles later. We bottled so many other drinks and put them in light bottles that they did not think it was a Cola drink and thought we were putting something over on them. I have never bottled all the bottles I have bottled Coca-Cola and other bottles, and I have never bottled any Cola, any kind of a cola drink in a bottle the size they bottle the Coca-Cola Co's. stuff in. The size of their bottle, I think, is a 7 oz. bottle, the sized bottle we put our drink in is 7½ oz. bottle. There is not as much difference between them as there is between them and a beer bottle. I do not think a man who was not familiar with handling bot-

(Deposition of W. M. Pollock.)

tles could tell the difference, if he was not formerly handling bottles. The color of these different cola beverages are about the same, but there is a difference in the taste of all I ever tasted. I do not know whether you would call it a great difference or a slight difference; that is a difference in them. Some people cannot tell the difference but I can. You take lots of people that never did drink a Coca-Cola or Cola drink around out in the wilds or country, you could give them anything and they would not [924] know the difference, but a man used to drinking one particular brand I think he could tell the difference. When I was in this restaurant business I handled soft drinks. We handled a cola in bottles. People in asking for those drinks call them Colas. They would say give me a Cola. I never heard any of them say give me a Dope; if I did it has been some time ago and I have forgotten. I never hear them say give me a koke at that time, but I have heard it around the fountains and different places. I have heard Koke and Dope, well, mighty near ever since I can remember a Cola drink. I have heard Koke called more than I have dope. These words as applied to a soft drink I think they mean a Cola drink. That is what I mean when I call for them. I go into a soda-fountain and ask for a Koke or a Dope mighty near every day; I expect to get a cola drink. I do not expect any particular cola drink because it don't make no difference just so I get a cola drink; a caffeine drink. When I go in and ask for a Koke or a Dope, I do not consider

(Deposition of W. M. Pollock.)

I am making a definite and specific request upon the soda dispenser for Coca-Cola and nothing else. Just so he gives me a Cola drink to quench my thirst, that is all I care about. I am not particular about what he gives me. The people in ordering call for Cola and sometimes they use Koke. We have had written orders call it C-o-k-e. I do not know what you pronounce it. I have one at the house; I do not know, the secretary may have some more in his safe; I expect he has. I can get it as quick as I see the Secretary unless he gives me orders. I have had lady customers come into my place and ask for drinks; in asking for them they used Coca-Cola if they wanted a Coca-Cola, or Cola if they wanted a Cola. We had a customer here on Seventh Avenue, a lady, and when she calls at the house she tells me, now make it kind of heavy, you know how I want it; that is the way she takes it, she wants it kind of heavy. She wanted a Cola kind of heavy, said the Coca-Cola Company their stuff got so it was not any good and she wanted it kind of heavy, kind of biting. I would take it out and put a little more syrup to it; that is the way I fixed it up for her. I told her I would send out a box; she would know she [925] was not getting Coca-Cola, and our crown says it, and the bill goes with it, and she would see we do not bottle Coca-Cola. I do not regard Koke and Dope as meaning any certain one.

Cross-examination.

I am now bottling John D. Fletcher's Coca and Cola flavor. We have been bottling that drink all

(Deposition of W. M. Pollock.)

the year, I believe; we started in April but we did not get his trademark until here, I guess, a little before Christmas. From April to Christmas we just called it a cola. We have not gotten ours up to look like Coca-Cola. I work down at Fletcher's part of the time and down at our place part of the time. He is not interested in our place at all; I work at both places. In the bottling plant I bottle and make syrups; bottle on the bottling machine part of the time. In the winter-time I run the whole place. The president, secretary and vice-president stay in the summer-time. R. F. Davis is secretary of our place, J. R. Hill is vice-president, and G. R. Hill is president. It has been so long since I have handled Gay-Ola I do not know whether it was the same color as Coca-Cola or not but they were in red barrels when I handled it. I said we changed in bottling Rye-Ola. We changed because we were bottling so many drinks of the same color, cream soda, was the same color as Rye-Ola and Ginger-Ale was also about the color of Rye-Ola and people would not buy Rye-Ola because they thought it was the same drink. We had so many drinks just alike that we changed to make it in a bottle and get the people to buy the goods. I do not know why they did not buy the goods in that kind of bottle, they wanted a different kind; that is the reason we changed and got it into a different bottle, because the Murfreesboro people were shipping a substitute in a brown bottle, on the same order of the drink we were shipping. I think they were shipping Koke at that time. If a man

(Deposition of W. M. Pollock.)

makes a kind of a cola drink he claims it as a substitute to the other drinks; all these different drinks are substitutes to one another. That is what people call it; like Mr. Fletcher says at the house, they say there that people claim he is trying to make a [926] substitute for Coca-Cola; he is not, but he is trying to make something better. We changed the bottle because we had so many different drinks alike of the same color in the same kind of bottle; we changed for Rye-Ola, a kind of brown bottle. I changed to a smaller bottle; it was costing too much. Like people talk around here in some way, they say someone is getting up a substitute for Coca-Cola. I do not think a man who gets up a cola drink gets up a substitute.

Redirect Examination.

The reason why I think they call them substitutes, there is so many cola drinks out and the Coca-Cola Company advertised so heavy, that a man thinks, people think because if a man gets up a cola drink he is trying to get up a cola drink to substitute for the Coca-Cola Co.'s drink, that is the reason I think I do not consider that drink I am putting out a substitute to Coca-Cola, I do not consider Star-Cola a substitute to Coca-Cola. I do not think the people consider my drink a substitute for Coca-Cola. I have gone out to the base-ball park.

Mr. HIRSCH.—I do not think that is a proper subject for redirect examination and we object to it on that ground.

(Deposition of W. M. Pollock.)

Objection overruled and appeal prayed and granted.

They serve Diehl's Star-Cola there in bottles. I have drank it out there. I always say give me a Koke or give me a Dope, that is what I say at places like that, and they serve me Star-Cola. I do not think I am getting Coca-Cola when they serve that to me. I know I am not because the boys don't holler that, and then there is advertising on the crown. They holler Diehl's Star-Cola.

Deposition of J. C. Price, for Defendants.

J. C. PRICE.

Direct Examination.

Twenty-two years of age; business, soda dispenser. I am running a restaurant now, been in the restaurant business for the past four months. I was soda dispenser for about six years. There are many different brands of cola drinks I have served, I could not call them all, I know a few, Arrow-Cola, J. D. F. Cola, Koke and Cola, Gy-Ola, Afri-Cola, and I have dispensed Star-Cola and Gerst's Cola, too, and Coca-Cola. [927] I have worked here in Nashville, St. Louis, Evansville and Birmingham. At these different towns I sold different cola drinks. In St. Louis I had the Coca-Cola, the genuine Coca-Cola and another cola. When customers came in and asked for a Koke or a Dope I sold the competing drink. If they asked for Coca-Cola I give them the genuine Coca-Cola. We served the competing drink because we felt like they did not want the genuine, if they

had they would call for it by the full name. The words Dope and Koke mean, in my opinion, a cola drink containing caffeine. I have had customers come in and call for a Dope and call it its name, for instance, J. D. F. Cola, or Koke, and Kola, they would prefer it to the Coca-Cola. The last place I worked in Nashville was S. W. Harvey, 303 Broadway. We dispensed there J. D. F. Cola and Koke and Cola, made by John D. Fletcher. Those different cola drinks were served when Koke and Dope were called for by customers. We handled Coca-Cola at that time and customers asking for Coca-Cola were served the genuine Coca-Cola. I do not know whether or not any of our customers in calling for Koke and Dope knew they were getting a different brand of drink from Coca-Cola, but they all seemed satisfied. Very seldom I ever had a man turn it down and say it was not the genuine—I mean a man come in and call for a dope and it was very seldom that I had a man go away dissatisfied. The taste and color of these different cola drinks is almost the same. I have been out to the ball park here, they sell and advertise Star-Cola out there. I have heard people out there, patrons, asking for Dope and Koke. I have hollered at the boy to give me a bottle of Dope, I call it Dope, he would give me Star-Cola. You could tell by the bottle they were not giving you Coca-Cola. It says Diehl's Star-Cola on the bottle and on the crown. A traveling representative of the Coca-Cola Company called when I was at Mr. Harvey's, I forgot his name, came where we were working at Mr.

(Deposition of J. C. Price.)

Harvey's and called for a Dope, he did not call for it by Coca-Cola. I gave him the competing drink and he said it was not the genuine and asked what I was doing with a competing drink for Coca-Cola syrup in the container **[928]** marked Coca-Cola. I told him that did not have anything to do with it, that while the manufacturing company made that fountain and labeled the jars, I thought I had a right to put it anywhere I pleased. On the fountain, it was a double fountain, worked by two men, and there was but one man. You understand there was a syrup container for Coca-Cola on the right-hand side and on the left-hand side a Coca-Cola container, and on the right side I had Coca-Cola and on the left side I had Coca and Cola, and he came in and called for a dope and I give him the syrup on the left-hand side. Coca and Cola made by John B. Fletcher. I would know the gentleman if I were to see him again. That looks like the man there—(indicating Mr. Herr.) He said it was against the law to put a competing drink in a Coca-Cola syrup container. I told him I felt I had the right to put the syrup in any one of the containers I pleased because we had paid for the fountain. I never substituted this competing drink, J. D. F. Cola, when Coca-Cola was called for. The brand of the drink I had on the left-hand side was Coca and Cola made by John D. Fletcher, the same thing as J. D. F. Cola. These various drinks I have referred to most all came in red barrels. The Coca-Cola Company had a barrel that was very close to it, the paint was. The Coca-Cola Co.'s barrels look to be a darker

(Deposition of J. C. Price.)

colored red. I do not think I could tell the difference just at a glance. I go into soda-fountains myself and ask for a Koke or a Dope. I expect to get a competing drink if they do not handle the genuine. I do not consider when I go into a soda-fountain and ask for a Koke or a Dope that I am making a definite and specific demand upon the dispenser to give me a Coca-Cola and nothing else, because if I wanted a Coca-Cola I would ask for it when I went in.

Cross-examination.

All these cola drinks are about the same taste and about the same color. About all that I have seen were shipped in red barrels. By competing drinks I mean these drinks, other cola drinks which are sometimes spoken of as substitutes. [929] Coca-Cola is the genuine cola drink, that is the product made in Atlanta. This Coca and Cola is the stuff Mr. Fletcher put out, he put it out as J. D. F. Cola and then changed the name to Coca and Cola. He put on the crown John D. Fletcher's Coca and Cola flavor. That was what was in the Coca-Cola container at the fountain that the Coca-Cola representative Mr. Herr objected to. The container has a porcelain screw top, Coca-Cola. I had this conversation with Mr. Herr last Spring, 1914. I do not remember what month it was. It looks like the gentleman, Mr. Herr, a tall heavy fellow. I could not be perfectly sure because it passed from my memory, but so far as I recollect it was him. Those competing drinks cost the dealer less money than Coca-Cola and there is more profit in it. When a man comes in and asks

(Deposition of J. C. Price.)

for a Koke or a Dope and if I have any of the competing drinks I give him the competing drink, but if I have not got the competing drink I give him the genuine, but if I have both I give the competing drink because I can make more money on it.

Redirect Examination.

I do not consider when a customer asks for a Koke or a Dope that he has asked specifically for Coca-Cola.

Deposition of Mat Wilson, for Defendants.

MAT WILSON.

Direct Examination.

Fifty years old; live in East Nashville; lived here all my life with the exception of three years I was down the country, when I was a little orphan boy. I have a drug-store located on corner of Third Avenue and the Square, in Nashville, Tennessee. I have a soda-fountain in my drug-store. I dispense eight or nine different kinds of drinks. I dispense Gerst's Cola. It looks like Coca-Cola and I never did see any difference in the taste. I am no expert on the taste because I would not drink but dog-goned little bit of it. I do not handle any other cola drink. Customers coming in and asking for that drink ask for a Dope, give me a dope. I serve them in response to that request, this Gerst's Cola. When customers come in and ask for a Dope I do not consider they are making a definite and specific request for Coca-Cola, if they did they [930] would ask for Coca-Cola. I have had some few ask for Coca-Cola and

(Deposition of Mat Wilson.)

I would tell them I did not have it, and they would say, give me some of that other Dope. Before I went into the drug business I was in the saloon business. Ever since I can remember we handled cola drinks there. This Gerst's Cola, I had the syrup and made it just like I do now, made it from the syrup drawn from a spigot by adding carbonated water. Customers used the name Dope asking for it there. Some did not know what it was; they would say it is better than I can get at a soda-fountain. I said, "This is Gerst's." Then they would say it is better than I can get at a soda-fountain. I would say, "Well, call again then." Then I have had this Mr. Sidebottom down here, who didn't drink any whiskey; he would want his Dope, and he did all his drinking at my place, because he said it was better than he could get at the soda-fountain. Dope means, as applied to a soda-fountain drink just some slang word; I imagine that just sprung up, that is all I know. I have had people come in when I run a saloon, just pass the word, and ask, I want some whiskey, and say give me some of that Dope I have. I knew what they wanted, and I would give it to them, and especially when prohibition first started up here. I was the one who broke the ice for them all. They arrested me 36 times one day. That's right, I was not *bott*-legging at all. I tried to get my license, and they would not give it to me, so these boys, they named my place soft drink stand #1, and they all opened up when *Up boat* the cases next day. And I only had a little of this junk down there, no whiskey at

(Deposition of Mat Wilson.)

all; I only had a jug that we were using and I knew they were after me before that, and I laid her away from them, and, finally, I got into the game, too, but I was using all of this dope, they call it, Gerst's stuff and Beerette and all of that stuff that would blow you up, and finally I eased back into this game and called all of this stuff Dope. They would come in and say, give me some of your Dope.

Cross-examination.

Dope could be whiskey or anything else. If they would come in and say [931] give me some Dope, I knew what they wanted. You would not have to knock a man down to know what he wanted; and he did not want to come out and say anything there, and I knew what they wanted, and they would ask for a dope, and I would give it to them. I never have handled Coca-Cola in my life. I just don't fancy it; don't like it. I understand the Coca-Cola Company put $10,000 in here to work this prohibition business; I said, "Damn them, I would not buy any stuff from them, and never did buy any stuff from them." When a man comes into my place and asks for a Coca-Cola, I tell them I have not got Coca-Cola. I tell them I have Gerst's, and very seldom they will walk out. I have boys at our fountain. I do not know that when people come to my fountain and ask for Coca-Cola, Koke or Dope, they are all served out of the same container; if the boys do serve them that way, I tell them not to. I stayed behind the counter when I ran a saloon.

(Deposition of Mat Wilson.)

Redirect Examination.

People did not ask for Dope much before prohibition.

PRESENT ON BEHALF OF THE COCA-COLA COMPANY.

Messrs. HARROLD HIRSCH and EDWARD S. ROGERS, Attorneys for the Coca-Cola Company, and Mr. PIERCE, also for the Coca-Cola Company; Mr. A. B. LITTLETON, Attorney for the Koke Company of America, and Others, and Messrs. W. F. NORMAN and J. C. MAYFIELD, on Behalf of the Defendants Herein.

Mr. HIRSCH.—We have asked for the rule as to the witnesses.

Mr. LITTLETON.—He is a defendant (referring to Mr. Mayfield).

Mr. HIRSCH.—I am going to find out who he is.

Mr. LITTLETON.—He is a personal defendant.

Mr. HIRSCH.—And also to see whether he represents any of the corporations.

Mr. LITTLETON.—Yes, he is present also on behalf of The Southern Koke Company, Limited.

Deposition of H. C. Groves, for Defendants.

H. C. GROVES, witness on behalf of the defendants.

Direct Examination.

I was born in 1866; reside, Ocalla, Florida. Lived there since '87. **[932]** Engaged in the drug business since '89. I have had a soda-fountain in my establishment since 1889. I know J. C. Mayfield. I knew him when I was manager of the store, in the

(Deposition of H. C. Groves.)

spring of '88; I first met him at my store in Ocalla, Florida; it was not my store then; I was managing it. He was soliciting for cola drinks at that time, trying to sell me cola drinks. The name of that drink was Koke, K-o-k-e. It was an extract of Coca and Cola leaves; he was selling an extract, I made the syrup. The color of that syrup was a dark-brownish. I have seen Coca-Cola syrup. I judge they are just the same, this Koke and Coca-Cola. I made a drink out of it, and drank it. It had a slight bitterish taste just like Cola leaves and Coca leaves extract. It tasted sweetish, something very similar to the taste of Coca-Cola. I bought some of it at that time, a very small quantity, as I can remember it, a quart; he shipped it to me in a quart bottle. The label on the bottle just said Koke extract and the directions for making the syrup. I next saw Mr Mayfield when I was making a purchasing tour in the latter part of the year, purchasing for my fall trade. In making that purchasing tour I went to Atlanta, on the way to Chicago, through Atlanta; when I got to Atlanta I saw Mr. Mayfield; he was the only one I know. I went to his office. I knew where his office was then, but I do not know now. When I went there I told him I had tried out the extract and gave him an order for some more. He seemed to be doing pretty well with it. He sent me more after that, and I continued to handle it up to date, continuously from that time up to date. I did not always get it in Atlanta. I bought it from Atlanta from the Pemberton Medicine Company at

(Deposition of H. C. Groves.)

Atlanta that I got it from, and then Mr. Mayfield seemed to form a company, Mayfield Manufacturing Company, what I remember; it was at Birmingham at one place, and Nashville another, and I got some from him in St. Louis. I get it from him now at New Orleans. The name of that company is The Southern Koke Company, I think it is, Limited, something like that. The receptacles I got this product in first came out in small packages, the extract I got in quarts, quart bottles, and, as a general rule, I got [933] jugs of extract and then he got to making the syrup up and putting it in barrels; I am buying it in barrels now. The barrels are painted some reddish color. At first it was just a shipping tag with the labels on them, nothing on the bottle except the directions and what it was, Koke extract, and directions how to make it. Later on they had a small label on the barrel, just the word Koke is all on that label. There was one representative of the Coca-Cola Company called on me the last year or so, he just came there to put up some Coca-Cola advertising matter and I told him that I did not want that Coca-Cola advertising up, that I was not doing any advertising for the Coca-Cola drink, and that was all he said to me then, and I told him at that time about the other. He came back afterwards, and asked me for a sample of what I was selling and I told him—I gave it to him and he went away and said, "I am going to make it hot for you," just that way, and, I said, "I do not understand how you can do that. I am not selling Coca-Cola; I do not see how you can make it hot for

(Deposition of H. C. Groves.)

me." He intimated I was trying to sell something else instead of selling Coca-Cola, and intimated to me that I had no authority to sell anything else but Coca-Cola. I had not been substituting as a matter of fact. He said, "Well, you will hear from me in this matter" He did not tell me how he was going to make it hot for me; he gave me his name, but I cannot remember it right now. A man by the name of Peace called on me; he claimed that he came down there ostensibly to buy me out, that was the first thing, I found out afterwards Peace was supposed to be a detective or something of that order for the Coca-Cola Company. Peace came to my store, and he began the talk. He said, "I have been looking around for a place to invest," and wanted to buy me out, and, of course, I was anxious to sell. I said, "Why, I have a good thing here," one of the first things I said, and I said, "I have the A. G. S. contract to sell in this case, and I make five to six hundred dollars on that, but I pushed that." And while he was there the mail brought in a bill from the Southern Koke Company, and I said, [934] "Here is another good thing I have got. I do not sell Coca-Cola, and have not had any for four years, because Mr. Miller of the Coca-Cola Company made me mad, and, in addition to that, I can make more money selling Dope and Koke, and I have got the people educated up to buying Koke and Dope in this town, and told him that at that time I was not selling Coca-Cola, but, of course, went on about the other things in the store. While I was standing there, he asked for a drink of

(Deposition of H. C. Groves.)

Coca-Cola. I said, "Well, we don't sell Coca-Cola. I will have to give you Dope." He gets Dope and drinks it. And then afterwards he made information against me, and in the information before the United States Court, he said, that I told him I did not sell Coca-Cola. By this information, I mean a lawsuit the Coca-Cola started against me for something. I do not know what it was. These agents intimated that I would be sued by the Coca-Cola Company. That was the information I got from them and from all the neighborhood around there, I was going to be sent to the penitentiary for some great crime I had committed. They did not tell me I had been doing anything. They tried to show that I was, but did not tell me that I had been doing anything. They give me no reason for their hostility towards me except they were going to make me sell Coca-Cola. We agreed in the suit for the temporary injunction.

Mr. HIRSCH.—I object to the witness stating the results. The decree is the best evidence thereof.

Exception overruled and appeal prayed and granted.

In the suit the Coca-Cola Company presented their case, witnesses and all, and we just submitted to the judge without any argument or witness or anything, of course, conceding that we let the Coca-Cola Company have an injunction against my selling Coca-Cola, because we were saying right then that we did not sell Coca-Cola and did not substitute for Coca-Cola. I sold out the business the first of January, for the reason that the tampering and charging of

(Deposition of H. C. Groves.)

these detectives and Coca-Cola representatives got the impression there in town that I had committed some grave crime, and the people there in town thought I was going to be [935] sent to the penitentiary for something I had done. You see these folks, Peace and the other young man, went around town talking about the business and the misrepresenting we had been doing, and got the impression in town that I had been substituting not only in soda-water, but drugs and everything else, and ruined my business, and I thought I had better get something for it, and I sold what I had.

Cross-examination.

I sold out for the reason that the business was going down, and the substituting was the only thing I could hear. I sold out to protect myself. I continued in my business from the time that temporary restraining order was issued and entered into until the first of January, 1915. This temporary injunction entered against me was in June or July. Our side did not offer any evidence. I do not know what I was charged with; I did not read the bill. I had an attorney. I suppose my attorney read the bill. We told the Court we did not care at all for the restraining order and the restraining order was issued, that I should not substitute anything for Coca-Cola, that was all, so far as I know. I did not understand I was charged with substitution. I told you I did not understand I was being charged with anything. I don't think I ever saw the decree.

(Reading.) "This case coming on to be heard

(Deposition of H. C. Groves.)

upon the motion of the plaintiff for a temporary restraining order and the defendant, having filed his motion to dismiss the bill of complaint, and the same having been argued and submitted, it is ordered, adjudged and decreed that said motion to dismiss be and is hereby denied and submitted." I do not remember having entered a motion to dismiss the bill, my attorney did that. I employed an attorney to represent me.

(Reading.) "And said motion for temporary restraining order upon the bill of complaint and the affidavit filed in support thereof having been argued and submitted by counsel for the respective parties—"

I do not remember my counsel arguing the case. All he did he said, we submit to it. That was his argument, if that can be called argument. [936]

(Reading from the decree again.) "It is ordered, adjudged and decreed that the defendant, Anti-Monopoly Drug Company, a corporation, its attorneys, officers, servants, employees and representatives be, and each of them is hereby restrained until the further order of this court from infringing upon the trademark Coca-Cola, and the trade-rights of the plaintiff herein, and from substituting, passing off or permitting the sale of any product when Coca-Cola is called for that is not the product manufactured and named and sold by the complainants in this cause, and from applying to any syrup not manufactured by the plaintiffs, the name Coca-Cola or from applying any other word or words that is a

(Deposition of H. C. Groves.)

colorable imitation thereof, and from using any name, whether nickname or otherwise, similar to the name Coca-Cola, as applied to any product, so as to cause any misrepresentation or deceit. Done and ordered this 23d day of June, 1914, by Judge Call."

Mr. LITTLETON.—I wish to enter an objection to that question and the questions he has read from this paper, because the decree is not in evidence, and there is nothing in the evidence to show what the paper is that he is reading from.

Exception overruled and appeal prayed and granted,

I think there was a decree entered against me. I made no objection to the entering of that decree, because I was not doing it, substituting and passing off. All that there is in that decree I was living up to before the decree was ever entered; that was the reason for not entering any objection to that decree. I was not doing it. The Court did not find that. The Coca-Cola Company offered to throw the whole thing out, if I would go on, through your attorney Mr. Bufford—Bufford & Reynolds; I got a letter from Mr. Bufford and I got a letter from Mr. Reynolds, too. He said that we would not, that it was not dismissed; that he would dismiss it if we would submit to it before the temporary injunction was given, if we would submit to that, and would waive damages, and ask that the words color be stricken out of that decree. That did not go through because the judge did not allow it. The Coca-Cola [937] Company would not agree to strike "color" from the decree. I

did not agree to it myself. The Coca-Cola Company offered to waive damages on the permanent injunction, and I kicked on the ground that the word color was in there, and the Coca-Cola Company would not agree to strike it out, and the decree is not worded any different yet.

When Koke and Dope are called for I sell Dope and Koke made by the Southern Koke Company, the Southern Koke Manufacturing Company. They are located at New Orleans. I have not had any Coca-Cola in my place of business for three or four years. Within that time when a man came into my place of business and asked for Coca-Cola, I told him I had none. This is as truthful as every bit of testimony I have given this morning.

Mr. LITTLETON.—I wish to enter an objection to the counsel attempting to bully the witness.

Exception overruled and appeal prayed for and granted.

I had a sign on my fountain that I did not sell Coca-Cola. It was generally known there that I did not sell Coca-Cola. Every statement I have given is true. I sold out to J. G. Parish. That representative of the Coca-Cola Company that called on me and made those statements about, "You will hear from me," was Satterfield. He represented to me that he was with the Coca-Cola Company. I do not remember how long I have been getting these barrels that had this K-o-k-e on it. They come, some from Birmingham, some from Nashville and I think one or two from St. Louis and some from New Orleans.

(Deposition of H. C. Groves.)

Sometimes Koke was stenciled on the barrels and sometimes a printed label was stuck on. I cannot write down here exactly the way that appeared. I do not remember whether it was in black type or fancy type. I remember K-o-k-e was on it. The jugs had labels on them. The barrels some had Koke stenciled on them, or labeled on them, and I have known some with K-o-k-e and D-o-p-e on them the same as other things.

I first met Mr. Mayfield in the Spring of 1888. At that time **[938]** he was selling cola drinks. Mr. Mayfield represented to me he was selling a new drink, the name of the new drink he told me was Koke. I ordered a quart on a guarantee sale to try it out. It came in qpart container bottle. A round tall bottle, it had a cork in it. The label on this bottle was K-O-K-E extract, and the directions for making the syrup from the Koke extract. I do not know how this word Koke was placed on there, It was printed, I remember it had Koke on it, but I do not remember how it was written. I do not know anything about type, I know it was printed.

Q. 268. I present you here something made with pencil. It is not printed, but you say what you had was printed; I ask you if that name K-o-k-e right there, did it appear like the first one or like the second one? I think it appeared like the first one. It was just printed on there, that is the place it was printed, that is what I call printing. I do not remember about the shape or color of the label. When the label comes to me it is mighty dirty, it comes

through the freight. The syrup was spilled on the label on the bottle, that bottle came by express, the Southern Express Company. I do not remember whether I bought any more Koke after that before I saw J. C. Mayfield again. I came to Atlanta in the Fall of 1888. I was going on through I did not go to any hotel, I went to Mr. Mayfield's office, I do not remember the street. I told him I was doing pretty well with his extract, just as a casual caller and bought some more, just another quart. I did not see the container, I did not go back to Ocalla. I was on my way to buy goods. Sometimes I would go through Louisville and on up to Chicago and perhaps come around by New York, home, that was in the Fall of 1888. I bought goods in Louisville from Arthur Peters, and from A. S. Maxwell, in Chicago. We had the same name we have now, the Anti-Monopoly Drug Store, located in Ocalla, the same as we are in right now. At my sale in January I just sold my stock out. I just gave orders as we needed it after that. They come in different style packages, some of it came in a one-gallon jug. It did not have a **[939]** label, it had a tag tied to it with just Koke on it, the same as the other. It was printed, is all I know. Ithink it was black, a printed label; a cheap label, that was all, a label in drug parlance, it was tied on with a string. 1888 is when we started in selling it. I do not remember distinctly when the jugs came to me from Birmingham or Nashville, but about 10 or 12 years ago. One or two came from St. Louis. I think the last two or three years they

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came from New Orleans, Louisiana. I got them from Atlanta 7 or 8 years, then from Birmingham or Nashville, Birmingham first. I could not say positively how long, 4 or 5 years maybe, about the same length of time from Nashville and then a few from St. Louis up to the time I got them from New Orleans. This Chicago house I did business with, S. A. Maxwell, we bought stationery from them, drug sundries, etc. They had a drug and stationery house. The name of the concern that shipped me this quart in 1888, I understood, was the Pemberton Medicine Company, and they continued to ship me all the time that the shipments came from Atlanta. So far as I know the firm name after the shipments came from Birmingham and Nashville was Mayfield Manufacturing Company. I do not remember the name in St. Louis, I think it was the same, and from the Southern Koke Company of New Orleans. I first heard of Coca-Cola I think about the same time; I won't say for sure. I do not remember of Coca-Cola in 1888. I thought his Koke was the first cola drink that came out, it was the first one that had come to my notice. I was not handling Coca-Cola at that time. We have handled Wine of Coca ever since we have handled anything; that is a medicine, I think. I do not remember who got it out. I never heard of Celery-Cola. I had a Lippincott soda-fountain in my store in 1888. That was a very crude fountain, we used dispensing bottles. We had the bottler fill out tanks for us with carbonic gas. E. C. Smith was the bottler there then, there were

others but I did not deal with them. The first fountain was a counter and had a gas tank on it and receptacles to set bottles on, and had surfaces on them to put labels on the bottles to tell what we were **[940]** selling, an advertisement was on the bottles to tell what we were selling. O. H. Koehlne was the owner of the store in 1888. He was a tubercular patient and was almost gone when I got there. His brother William worked there at that time, he is dead. Julian Probst worked there, he is dead. Robertson was the name of one of the porters there then, he is dead. Jack Fillin is another, he is dead, too; all who worked there while I was employed as manager are dead except myself. I worked there as manager 19 months or about 2 years. I bought it out. I had a good many people work for me. The first was E. W. Harrison, he died long ago; then J. B. Carlyle, he is down there in the drug business now. He made an affidavit for the Coca-Cola Company that he sold Coca-Cola extravagantly now. Another was Ernest Mills, he is in Memphis; I do not know who he is with. Miss Moore worked there for me. I do not know her initials, she is in Ocalla, Florida. I do not think she is working for anyone now. Albert Miller worked for me, he is out west somewhere. There were others but I do not recall them right at this minute. I got three barrels from Nashville, some were labeled and some were stenciled, but all had this "Koke" on it. The patent medicines or proprietary medicines I was handling in the Spring of 1888 were Hood's Sarsaparilla,

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Fletcher's Castoria; it was not labeled Fletcher's, just Castoria, but it had his signature on it. And Widder's Spruce Tonic, and Armstead's Tonic, and some Chill Tonic, too, I remember. I do not think we had any extracts. Others were Tilden's Condition Powder, made at Pulatka; Schellenberger's, there are lots of them if I could sit down and think them over. I had a brand of cigars at that time made right there in Ocalla, Kiser's cigars. Before I went to the place in the Spring of 1888, I was attending college in Chicago, The Chicago & Illinois College, it was on State Street, I think, south of the river, I could not tell the number, near Harrison Street. That was the Chicago College of Pharmacy, This Illinois College of Pharmacy is the same thing, near Clark and Wells Street. I started **[941]** to attend in 1884. I went to Chicago College first, I think I went through one course. I was relief clerk, wherever they called me, in through Illinois. I worked once or twice as relief clerk for a week or two for Gail and Blocky; one time in the Palmer house store, the other time I think on Clark Street. The Palmer store faced on that side street in the Palmer House. That was in 1885. Those colleges required four years course and practical experience. I graduated, I think, in the Spring of 1888 from the Illinois College of Pharmacy. I was at work before I got my diploma in Ocalla. I went from the college to Ocalla. When I worked as clerk at Blocky's I was not around their fountain at all, I filled prescriptions. I received notice that I was going to

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be subpoenaed to come here and testify in the case and they asked me whether I would come or not. I was informed by letter. I do not remember whether it was from the attorneys or who it was from. I did not keep any letters, I was first informed a short while ago. I do not keep any correspondence of any kind, I do not try to. I have not any from my business back in 1888. It has all been destroyed I guess; I do not know whether they are down there or not. I did not try to keep books, I tried to do entirely a cash business, I never kept books. I just told them I would come without being subpoenaed, I asked them to advise me when to come. The name of my attorney in this case of Coca-Cola Company against Anti-Monopoly Drug Company was Reynolds and something at Jacksonville, Florida. I paid them $106.00. I never was reimbursed for the $106.00. I don't know whether this firm of lawyers communicated with the the defendant, Southern Koke Company, or any other of the defendants, or Mr. Mayfield about the decree, preparing the defense of this case or anything else. They never said a word about it to me if they did. Some of the wholesale drug firms in Chicago when I was at the Illinois College of Pharmacy were Hymater Taylor & Company; Morris & Palmer and Peter Van Skaack. That is about all I remember now. I did business with Peter Van Skaack after I went to Ocalla. I think I first commenced [942] handling Coca-Cola shortly after I bought the store. I was handling Koke at that time too, when a man

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came at that time and asked for Coca-Cola I gave him Coca-Cola, and if he asked for Koke I gave him Koke. Down in our section Dope is just coming in, just being advertised. I think I helped advertising that myself. This Koke Company makes Dope. Koke and Dope are the same syrup. I have heard the name Dope before it has been used there applied to these soda-fountain drinks. Sometimes Dope is a headache powder. I first heard dope applied to soda-fountain drinks prominently the last two years. I do not know as I ever had heard it applied to soda-fountain drinks before. The word Koke is applied to this drink I get from the Southern Koke Company, that is the only way I ever heard or understood it.

Mr. HIRSCH.—We wish to say we will present a certified copy of the decree entered on the 23d day of June, 1914, by Judge Call, a copy of which we have read from. We ask time to have it certified, A certified copy of the bill, and a certified copy of the decree and a certified copy of the record, of the evidence, and everything in the case.

Mr. LITTLETON.—Of course I will enter an objection to anything except the bill and the decree because nothing else was brought out against that and it is entirely irrelevant.

Exception overruled, and appeal prayed and granted.

Further deponent saith not.

Deposition of T. H. Lever, for Defendants.

T. H. LEVER.

Direct Examination.

Twenty-eight years of age; residence, Spartanburg, South Carolina. Lived there four years; engaged in drug business; have been engaged in the drug business about eight or ten years. Was in business before at Columbia. I have a soda-fountain in my drug-store; I have one in the store at Columbia also. I dispense at my soda-fountain a general line of drinks. I handle the Dope and Koke and Coca-Cola. I know a number of others, Mi-Cola, Ko-Nut, Rye-Ola, Gibb's Cola—that is a new one just became acquainted with yesterday. I have known of Cola drinks **[943]** ever since I have been in the drug business, about eight years. These cola drinks are almost the same color with a few exceptions, and just about the same in taste. The first lot of Koke and Dope I put in was long about in August, 1914. As a rule my customers come in and call for the drink they want sometimes, and then at others they will come in and say, "Give me a drink"; sometimes they will say, "Give me my dope" and any kind of—making sort of an application for a drink without designating just what they want. On a good many occasions I have had that. My drinks have been called for like that. The ones that know I handle Dope are acquainted with this special preparation and they expect to get it, at least I have never had any complaint. It has never

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been in a secret way for they all know about it, and when they come in and call for this Dope I give them that. I have had them come in and point at the bottle of capudine and say, "Give me my dope," or I have had them point at Bromo Seltzer, Celery Caffeine or any of those headache salts, when they kind of establish themselves with a certain drink at the fountain, and in a good many instances when they come in they do not call it by its proper name, but "Give me a dose of my dope." With respect to drinks at the soda-fountain I have got a lot of customers that come in and call for grape juice under the name Dope. A few days ago I had two farm boys come in and call "Give us a couple of dopes," and one turned to the other and said, "What will you have?" He said, "I will take grape juice," and he said, "I will take the same." These fellows evidently did not know there was any special drink I was selling at the soda-fountain under the name of "Dope" but had heard in a general way that dope was sold at soda-fountains. Most of my customers come in and call for Coca-Cola, call for "Coca-Cola"; those that are acquainted with the other drinks and call for Dope, want Dope, but most of them that drink grape juice call for grape juice, and with a few exceptions I have had them call out different drinks at the soda-fountain and apply the name dope to it. I had some Ko-Nut on hand at one time, but that was before your drink Koke and Dope came out, **[944]** Customers in asking for that drink Ko-Nut called for Dope and I gave

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them Ko-Nut. The word dope means to me as applied to a soda-fountain, more of a nickname than just any drink that a customer is acquainted with, more of a nickname for just any drink that a customer is acquainted with and when he gets acquainted with soda-fountain men, we usually know those fellows when they come in, it might apply though to hot chocolate. I have had ladies say, "Give me my dope" when I know what they wanted, they wanted chocolate, chocolate milk, because they were in the habit of drinking chocolate milk at certain times of the day, for instance, early in the morning when they wanted something nourishing they called for "hot chocolate" and applied the term dope to it. If a stranger came in my store and asked for Dope, I would give him Dope. I might be serving him something he did not want if I gave him anything other than Dope. Before I handled this product Dope and at the time I handled other cola drinks I understood customers wanted a cola drink when they came in and asked for Dope. I did not consider it designated any particular cola drink, and very often I would ask them to designate the kind of drink they wanted. I am not around the soda-fountain so very much but that has been the rule that is carried out at my soda-fountain, that is my instruction to the soda-men, and my other men in the store. I have been around the fountain enough to know the names my customers use in asking for drinks and to know what they mean when they ask for those drinks. I told my customers I

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had two syrups there, one was Dope, known as Koke and Dope, and the other Coca-Cola. They were competitive drinks and most of the customers that I,—special friends of mine—like our drinks, this Dope, because when I introduced it to them by handing out a sample they liked it all right; it satisfied their taste and seemed to be what they were looking for. Before I handled this drink Dope, when a customer came into my store and asked me for a dope I did not consider that he had made a definite and specific request on me to serve him with Coca-Cola and nothing else. I have been handling Coca-Cola ever since I went into the drug business. **[945]** I have not always handled some other cola drink along with it during that time. Coca-Cola syrup is not always uniform. It seems to be lighter in weight and lighter in color sometimes; I noticed that by the mixture in the glass, and have to use possibly just a little more to make a drink at other times. Most always the syrup is about the same in taste but I am not that well acquainted with it, I do not think, to give that as information. We mix our syrup with carbonating water before serving at the soda-fountain. There would be a difference in the drink if one glass was filled with water charged with about a hundred and forty, and the other glass filled with carbonated water, charged at about a hundred pounds. The one with one hundred and forty pounds would be a little sharper, more acid taste, and the one at one hundred pounds would be slightly flat. My attention was called to one bar-

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rel of Coca-Cola and there was a small substance coming out in the pan we were drawing it out in, and when the barrel was emptied I knocked the head out and investigated it and found in the barrel about possibly 8 or 12 ounces of a gelatinous looking substance, about the consistency of jelly, and tasted something like apple jelly,and right pleasant to the taste, and well, more like caramel, or something that possibly had precipitated in the syrup, sugar, something like that. It had a very pleasant sweet taste, with that exception, Coca-Cola has been about the same in that respect. This was precipitated. I am a practical druggist. I concluded it must have been slightly cooked too much, might have been the syrup, possibly some essential oil; I do not know if there is a certain essential oil used in Coca-Cola, it might have been something like that went down through the syrup and formed a jelly in the bottom. It really was a small amount for the quantity of Coca-Cola that was in the barrel. I do not know what condition would cause that precipitation to form, not being acquainted with the formula of Coca-Cola. A Coca-Cola representative called on me some time ago. I had a Coca-Cola representative to call on me to investigate this special syrup, Koke or Dope. **[946]** I informed him that I handled this, that I thought in doing it I was handling a legitimate syrup. I did not see anything wrong with it and that I was selling it for what it was called for, the name. Well, this gentleman did not state any more, but later, just several weeks after that, possi-

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bly six weeks after that, a special representative of Candler, Hirsch & Thomson, as his card indicated, came to me. Q. I will show you a card which we will mark "Defendants' Exhibit No. 8," and ask you if that is the card? A. That is the card, or one identical to it. I mailed that card into the Central Koke & Dope Company of Chattanooga. This gentleman approached me about 9 or 10 o'clock I think it was in the day. I was standing about in the middle of the store. Well, he walked right up and started by me, and I asked him if there was something I could do for him. He said, "Are you the proprietor?" I said, "Yes, sir." He said, "Well, I want to talk to you back here." I said, "No, this will be all right, right here." There was no one in the store but a little fellow and I did not care to leave the front of the store. He said, "Well, I am here representing Candler, Hirsch & Thompson of Atlanta in the interest of the Coca-Cola Co.," and he said, "We have a suit against you in the Federal Court." I said, "Well, what is the suit?" He said, "Violating the Pure Food and Drugs Act by substituting a drink for Coca-Cola." I said, "Well, that is the Coca-Cola Company's privilege. They can sue me. I do not feel like I have done anything, however. I do not feel like I have substituted and they can sue me if they want to." He said, "Well, the only way you can get out of that suit is to sign an agreement not to handle anything but Coca-Cola." I said, "If you came in to talk to me about that you can just leave the store." He

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said, "Good day, sir; we will just sue you." Well, later in the evening I was called up over the telephone by a gentleman that I bought goods from and this gentleman told me that this man told him that he was going to sue me, that he had a suit against me; he did not tell him anything about the agreement. Well, I said, "Yes, he told me the same thing." The next morning the **[947]** wholesale cigar salesman, who runs a retail place and a soda stand, called on me to get my order, and he told me the same thing, and he said that he told him that he had already had a suit against me and he wanted him to sign that agreement to handle nothing but Coca-Cola, that is Mr. H. B. Pierce, special representative of the Coca-Cola Company. I said, "Did you sign it." He said, "Yes." I said, "Well, I didn't. I do not think he has got any case against me inasmuch as I have not infringed on the Coca-Cola Company's trademark," and I said, "I did not sign the agreement." Well, I did not see his agreement; I do not know what it looked like. I never read one but I was offered one yesterday by a friend druggist to read, but I told him I did not care to read it. This conversation with this representative of the Coca-Cola Co., was carried on in a kind of a loud manner. He used kind of loud language in explaining his proposition to me, and I did not exactly like the way that he had approached me. I did not care to talk with him any longer, so I just dismissed him. I had not been substituting any drink for Coca-Cola. This representative after he

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left my place called on most of the trade in the same manner. I had reports on that without investigating it, from men that told me this—they said he acted in every—

Mr. HIRSCH.—I object to what other party told him.

Objection overruled and appeal prayed and granted.

A. He said that the—the man that told me this, said that he talked in a very forward manner.

Mr. HIRSCH.—I object to the answer as to what people told him as being incompetent evidence and move to strike the same out, and secondly, it being hearsay and conclusion.

Objection overruled and appeal prayed and granted.

What this Coca-Cola representative told me got about town so that it was known. I did not tell it outside of the business.

Cross-examination.

The name of the concern I am with is the K-W-N Pharmacy, K-W-N stands [948] for three members of the firm, my old firm, R. E. Kibler, G. de Foix Wilson, and O. L. Nettles. Mr. R. E. Kibler is not with the firm. He retired fro mthe firm about a year or a year and a half ago. Mr. G. de Foix Wilson is with the firm, Doctor Wilson bought Kibler out. Mr. Kibler is in Spartanburg in the manufacturing of patent medicines. I have been with this concern about four years, not in this special location, but with the firm. I was prescription clerk up until the

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time Mr. Kibler left, then I took his place as manager of this branch. They had two stores at the time, but only have one now. Prior to the time I was with this concern, I was with the Union Drug Company, Columbia. I was with them several years. Before that I was with Mr. Frank Hurd in Columbia in the drug business, I was with him some little time. I was with another, Mill's Drug Store in Columbia, I should say about two years. I started with the Mills Drug Company, my capacity with them was assistant in the drug department and working around the soda-fountain too with the help of a small boy. I think they handled Coca-Cola exclusively. I do not remember that the word dope was ever used then, I do not remember the word Koke being used in the South at all until they began to call for it at my soda-fountain as "Koke." None of my customers used it, that was in the Spartanburg neighborhood. I never had calls for Koke until the last year or so when I put in Koke and Dope, Koke and Dope is the same thing, comes labeled to me "Koke and Dope." At this Mills Drug Store in Columbia I do not remeber ever having served anything like Dope, I do not think they ever called for it, that has been a good many years ago, possibly 8 or 9 years ago. I was not continually at the fountain. I do not know just when this name Dope was applied to drinks at the soda-fountain, it was not applied before August, 1914. I never knew there were drinks called for by that name at soda-fountains. I do not remember any calls for Dope

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at this particular drug-store at all. That is at Mills, at Columbia. They only handled Coca-Cola. My first acquaintance with the word "Dope" was at the Union Drug-store in Columbia [949] that is a drug-store right opposite the depot, handling a lot of transient trade, and that word Dope was used there more than any place I have seen, and further up town it became a right special name for drinks at soda-fountains. After leaving the Mills Drug-store I went to the Union Drug-store. They handled a drink sold by Mr. Sizemore. It looked like Coca-Cola; they handled Coca-Cola also. It tasted like Coca-Cola. It was cheaper than Coca-Cola. I was at the soda-fountain but I was not special soda-man. When dope was called for there this syrup was given, it was the cheaper syrup. I think some few of the men gave Coca-Cola when dope was called for when they had been buying Coca-Cola and fastened that with the soda-men, when they came in and would say, "Give me my dope" and they were served with Coca-Cola. Both Coca-Cola and Sizemore's product was sold for 5 cents a glass. I do not remember the name of the Sizemore product, I do not know that even if it had a name. If I was at the soda-fountain and a man called for dope I would not necessarily think that he wanted Coca-Cola and I gave the drink there was the bigger margin of profit in, a drink without a name. That was the only drink similar to Coca-Cola. I was with the Union Drug Co. possibly 4 years. It was the latter part of my time there this article was put in by the manager of

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this place, this Sizemore syrup, and the first part we only had Coca-Cola. I naturally thought they wanted a cola syrup and gave them Coca-Cola, unless as I said, previously they would come there and point out capudine and say, "Give me my dope." Capudine is a headache drink. Prior to the time we handled this Sizemore's drink, and a man asked for dope I gave him Coca-Cola as a rule unless I knew he did not want it, like I said a few minutes ago, some men became acquainted at the soda-fountain by the special drink they called for and they got the habit of remembering them by the drink they bought, whether Coca-Cola, Ginger Ale, or headache medicine, and grape juice and they would say "Give me my dope." After the Union Drug Co., I went with the K-W-N Pharmacy. In the early part of my stay with the Union Drug Co., if a stranger came in **[350]** and asked for a dope I would ask him what drink he wished. I did not know anything about Coca-Cola, that was my acquaintance with the word dope, right there, and if he specified Coca-Cola, of course he got Coca-Cola. I was a prescription man, not a practical soda dispenser. If a stranger came into my place of business, if he asked for a "Dope" I would ask him what he wanted until I got acquainted with what he wanted; if he came in often and pointed out to me that he wanted a cola, when he came in and called for dope I understood what he wanted. This K-W-N company always handled Coca-Cola, and a general line of drinks, and Mr. Kibler at that time was doing the buying, and I do

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not know what he was buying other than Coca-Cola and the other drinks. If he was buying any other cola drinks, I do not know it. They always got Coca-Cola when they called for it. I knew he had a cola because I had charge of that end of it, of getting the supplies from the cellar and I knew that he had a cola. The name dope did not become applied up there quite so quickly as it did in other sections, as I have said before. We handled some other drinks there right at this Union Drug Co., this particular place, there were more calls for dope than any place I had ever been. In the latter part of my experience at the Union Drug Co., they would come in and call for dope and I did not know what they wanted. After I became acquainted with a good many people at the K-W-N and they called for dope, I served Coca-Cola because I had nothing else in the house. The K-W-N commenced handling other drinks in August of 1914, I bought a barrel of this Dope, the Central Koke Company's product. We bought a half barrel of this Hagan & Dodd's drink over here, Ko-Nut, we bought that half barrel since August, 1914. I never had the three at the same time. I gave up Ko-Nut. I was out of Koke and Dope a short while. I had a talk with the representative of Hagan & Dodd Co., had a little talk with Mr. Hagan, but it was nothing more than a favor that I bought this little half barrel of Mr. Hagan, and I used it up and have not bought any since. He tried to sell me more, and I said, "No," I had discontinued it. I did not like the drink. I paid for Ko-Nut a

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dollar a gallon. [951] When I had Ko-Nut with Coca-Cola and I was asked for a dope, I gave them Ko-Nut. I paid $1.50 for Coca-Cola, Ko-Nut is cheaper, both sell at the same price, five cents a glass. I instruct my boys at the fountain when a man asks for Coca-Cola, to give him Coca-Cola, and when he asks for Koke or Dope to give him what he asks for. While I was handling Ko-Nut I instructed him to give that as Dope. I had information from Mr. Hagan—advice rather, that his syrup was handled as "dope" and could be sold as "dope," and I had this stuff on hand and could get rid of it. My customers knew I had a different cola drink, I told most of them. I changed because the representative of the Koke and Dope Company showed me where it was a legal syrup, a legal proposition that I could handle it through legal channels. Naturally, it was one dollar a gallon, a little more of a bargain to the drug-store, and I handled it for that reason, and the reason that they had the words "koke" and "dope" copyrighted. This representative of the Koke Company showed me a sample of the syrup. He did not tell me that when "Koke" and "Dope" were called for I had to sell their drink. He said here is a syrup you can make a larger margin of profit on than any other drink you handle, as for instance Coca-Cola, but I do not know as he said Coca-Cola. It sells for one dollar a gallon, and you will have calls for it, because we are going to advertise it before the people. I thought I had a right to sell it when "koke" and "dope" were called for. He did

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not say anything about selling anything else when "koke" and "dope" were called for. I am not positive that he gave me a card at all, he made me a sample of this drink and said to taste it. I tasted it and it tasted all right to me, and I bought it. I have had people say they could tell the difference in Koke and Dope and Coca-Cola and I would just set them out and say "Can you see the difference in these two drinks, taste them" and as a general thing some say they can and some say they cannot. I paid a dollar a gallon for Koke. Ko-Nut was not satisfactory, when I got down into the barrel it was a little different. I did not compare Ko-Nut with anything, Mr. Hagan had been calling on me for a long time and I bought it through friendship for him. There [952] was a little something wrong with the flavor in comparison to the Dope and Koke I had been getting. I went back to Dope, I naturally compared it with Coca-Cola handling the two drinks. I have always kept separate containers. Before that I had not handled any drink of a similar kind and character to Coca-Cola since August, 1914, it might have been July, I hardly think it was as far as June. Up to June I had never handled any drink that was similar in appearance to Coca-Cola. I had two separate containers because they were separate drinks. I used it at the soda-fountain just the same as I used any other drink. I bought it and was buying it under this name and I used it under this name, sold it under the name. We never handled Gay-Ola to my knowledge. I never returned the Gay-Ola bar-

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rels thinking they were Coca-Cola barrels. I never handled Gay-Ola barrels at all. I do not know anything about what was done previous to my taking charge of the business. I was there in October, 1911, with the Company, K-W-N Pharmacy. The Central Drug Store—if you will permit me to say, put on a contest for the Gay-Ola Company and gave away fifty dollars in gold for some advertising proposition at their soda-fountain, and this Gay-Ola was handled at the Central Drug Store soda-fountain, we have gotten supplies from the Central Drug Store, ice-cream and things like that that we would run out and our cellar was used as a storage for bottles, ginger ale bottles and things like that, from the Central Drug Store; I cannot say but there might have been a barrel, or a Gay-Ola empty barrel to be sent back, possibly sometime before I took charge of the business, but the Gay-Ola barrel was sent down from the Central Drug Store. As I said the Central Drug Co., used our cellar for a storage for barrels and empty ginger ale bottles. The Central Drug Store was a branch of the K-W-N for the first eight months. We did not do any exchanging, we had a cellar down there where we could store these things in, and we did for the Central Drug Store, and it might have been when they were returning Coca-Cola barrels, they returned the Gay-Ola barrels, but I do not think there was any mistake **[953]** about it. We bought our Coca-Cola syrup from the Gear Drug Company, something like three or four hundred gallons of

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Coca-Cola a year from the Gear Drug Company. We do not buy from any other place. In 1914 I think we used only three hundred gallons, in 1913 something like three hundred gallons. I have only used two barrels of this Central Koke and Dope, and one-half barrel of the Ko-Nut in my time as manager of the K-W-N Pharmacy. I will find out when I bought this half-barrel of Ko-Nut so it can be put in this record. When I had Ko-Nut and was out of Koke and Dope I put the Ko-Nut in the container that had "Dope" on it. We have pumps, I do not think there is anything at the time we pasted a label, which had been on there, the nickel had been scrubbed off, but if there was one it might have been pineapple or strawberry. We first put on the label "Dope" and kept that on when Ko-Nut was in there. (Diagram of the fountain.) This side "A," this side "B." We labeled these containers, starting over on the extreme left of the dispenser "1" and we will come from there on toward the center with the number in numerical order, so that on both sides "A" and "B," commencing on the dispenser's left you would have fourteen containers in your fountain. I might not have that many, but I am using that diagram to show the position of Coca-Cola. Seven was dope. Now, on washing out the cup here, this young man might transfer that, slip it right over here to six; in washing out the cups, Seven, he took Six and moved it up to where Seven is, when he washed them out he put them back again. He was using seven always for dope. This whole thing

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moved out, all of this would slip out and he would put it back to six, then when it was boiled out it was moved back to seven. Six is labeled Coca-Cola, five is labeled Coca-Cola. We did not have Dope in anything labeled Coca-Cola, the cap of the plunger, but the label stayed right in the same jar. Coca-Cola was in six, dope was in seven. We have two caps at our soda-fountain with Coca-Cola, six and five. We keep two cups for we have more orders for Coca-Cola than any other thing at the soda-fountain. When we were washing out seven, we had the **[954]** dope in the tin package. Since I have been handling this one drink, Dope and Koke, that was my instructions to the soda-fountain men. I have no reason to believe that he would do anything different from what I told him. So far as I believe that was in vogue at our place of business since August, 1914, I always found it so. I could tell the different syrups by the labels. In following out my instructions, I do not think they would put Coca-Cola syrup in the wrong one. All I went by was the label and my instructions were when a man came in and asked for Coca-Cola I served him from Six and Five, and if he asked for Koke or Dope, out of seven. If I was out of Koke syrup I would serve him Coca-Cola but I never served Coca-Cola out of the Koke and Dope container. I am never out of Coca-Cola. Understand the Gear Drug Company by special permission I suppose from the Coca-Cola Company, if we run short on a barrel of Coca-Cola they are allowed to sell us ten gallons at this fifty-gallon price

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and we are never out of Coca-Cola. So far as my knowledge goes Coca-Cola has never been served out of the Dope container. Two different drinks made at different carbonations, would make a difference in the taste, that is, if the pressure on the carbonator was one hundred and forty pounds, that it would make a slight acid taste, slightly more than the one at one hundred pounds. I think the one hundred pound carbonation would be flat, I do not think that is enough in fact. Two hundred would be too much. The carbonation depends, not on the pressure altogether, but the mixture and the mixture depends on the proper proportions of the water and the gas. I never had any experience with water that was warm, my fountain is iced. The difference would be entirely due to the pressure largely. I do not know the first representative of the Coca-Cola Company that visited me, I think it was since August, 1914.

Redirect Examination.

You were asked on cross-examination if you ever handled any cola drinks or any drinks similar in color and taste to Coca-Cola before **[955]** you handled this Koke and Dope. A. Yes, sir. Q. I think you must have misunderstood the question because you stated you had not. A. This Ko-Nut—

Mr. HIRSCH.—Read the question. (The question was thereupon read.) "Q. What were you referring to then? A. Why, I was referring to the Ko-Nut, I suppose, that is the only article I ever handled. At the Union Drug Company I handled a product, I cannot recall the name, Mr. Sizemore is

(Deposition of T. H. Lever.)

the gentleman that sold it at that time, it was a heavy cola syrup, the taste and color of it was about the same as Coca-Cola. I handled it before I handled Koke and Dope. I was not the buyer for the Union Drug Company, but this was handled at the soda-fountain."

Cross-examination.

At the K-W-N I have never handled any cola drinks except Coca-Cola, Ko-Nut and Koke and Dope.

Mr. LITTLETON.—I want to tender this in evidence as Defendants' Exhibit No. 8.

Mr. HIRSCH.—I offer in evidence as exhibit to the testimony of Mr. Lever, Complainant's Exhibit No. 14.

Redirect Examination.

I know Mr. Ferguson, he brought a Coca-Cola bottle to me. I locked it up in the safe at the store. Q. I show you a bottle marked "Defendants' Exhibit No. 9" and ask you if that is the bottle. A. Yes, sir, that is the bottle. Q. How do you recognize that as the bottle that was turned over to you. A. Well, by the mark on the bottle there, and the substance in it. Q. What particular kind of peculiar substance is in that bottle. A. A rat. Q. Was that in there when it was turned over to you? A. Yes, sir. Q. And it was in there when it was turned over to Mr. Ferguson? A. I turned it back to Mr. Ferguson last night.

Recross-examination.

"I identify the bottle by the rat in it, I turned it

(Deposition of T. H. Lever.)

over to Mr. Ferguson [**956**] myself. Q. Suppose Mr. Ferguson had substituted another bottle after you turned it over to him. A. Mr. Ferguson has been in my presence and that has been in my grip, I turned it over to him last night. Q. He was not in your presence a few moments ago. A. No, but that was in my grip. Q. The only way you can identify it is by the rat. A. The rat in the bottle looked identically like that. Q. There are several bottles that look identically like that around Spartanburg, South Carolina. A. Yes, sir; but I never have seen one with a rat. Since the taking of the evidence of the above witness, T. H. Lever, Mr. Lever has advised the attorney for the defendants' herein and said attorney has shown the commissioner the letter from Mr. Lever, in which he states, "In my examination on the witness-stand yesterday in Atlanta, Georgia, I promised the attorneys for the Coca-Cola Co. I would secure and advise them of the dates of my first barrel of Koke and also of Ko-Nut. This half-barrel of Ko-Nut is the only other syrup besides Koke and Coca-Cola that I have handled at this place of business and the dates are, 1 barrel of Koke May 23, 1914, and a half-barrel of Ko-Nut August 29, 1914."

Deposition of Harrison Ferguson, for Defendants.

HARRISON FERGUSON.

Direct Examination.

Thirty-seven years of age; live in Spartanburg, South Carolina; lived there all my life practically.

(Deposition of Harrison Ferguson.)

I was Justice of Peace there until the 8th of this month. I bought bottled Coca-Cola in Spartonburg, So. Caro. (Defendants' Exhibit No. 9 introduced.) I purchased that botle in Spartanburg at a Greek's fruit stand, by the name of Leo. I do not know whether that is his given name or his surname, he is known by that. That was the latter part of the summer, about the middle of August. I went down to buy Coca-Cola and asked him for a bottle of Coca-Cola and he give me this. I gave it to Dr. Corpe, who was Health Inspector there at that time, of the City of Spartanburg, until he left last Fall, and when he left he turned it over to me, and then for safe keeping I caried it down to the K-W-N Pharmacy and locked it up in [**957**] their safe. Dr. Corpe was there when I purchased it, I think, the health doctor, I turned it over to him because it had a rat in it, it looked like a rat, the same as in there now.

Mr. LITTLETON.—I wish to tender and offer in evidence this bottle of what looks like Coca-Cola as Defendants' Exhibit No. 9.

Mr. HIRSCH.—The testimony is objected to as immaterial, irrelevant and incompetent, and I move to strike it from the record.

Objection overruled.

Cross-examination.

I do not know how long this bottle had been in the Greek's stand, it was taken out of an ice-box he had, I did not see it bottled. I did not see him get it, although Mr. Lane, who had charge of the Coca-Cola works in Spartanburg, came up to see me in refer-

(Deposition of Harrison Ferguson.)

ence to it that afternoon, and it has the same labels which the other bottles had that he said were purchased at his plant, the same brand and all, but whether that came from there I do not know. I have never taken that crown off of there. I complained to Dr. Corpe, the Health Inspector. I suppose Dr. Corpe told Mr. Lane and he came up. I did not drink any of it. I bought it to drink. I usually hold a bottle up to the light, and I saw that substance there. I have not tampered with the bottle in any way, shape or form. The Greek looked utterly surprised when he looked and seen the rat in it, and offered me another bottle for it. I did not know what he had done with it before I got it. I just wanted to purchase a bottle of Coca-Cola. He had about the ordinary soda-waters and things of that sort. I just saw him open the box and he give me this Coca-Cola. I do not know who bottled it positively, but I think the local plant did, the Coca-Cola Bottling Works. I do not know the name of the company, I never paid that much attention to it, I just buy the goods and it is on the label. Mr. J. W. Allen has charge of the works there, and he has complete charge of it so far as I know, their place in Spartanburg is on Stuckey's Row, it is near the C. & W. C. railroad trestle. **[958]**

Deposition of E. A. Sharp, for Defendants.

E. A. SHARP.

Direct Examination.

Thirty-two years old; reside at 521 Hagan Street, Jacksonville, Florida. Have resided in Jacksonville about 8 years, engaged in drug business about 6 years. Name of our drug-store is the Terminal Pharmacy, located at 930 West Bay Street. We have a soda-fountain in our drug-store; we dispense ice-cream sodas, root beer, Coca-Cola, Dope, Brain-Ol, Gay-Ola, you know about the line of stuff we handled, all those. We do not dispense Gay-Ola right at the present time. Drinks similar to Coca-Cola in color and taste I have known of are Brain-Ol, Rock and Koke. Customers calling for cola drinks call for Coca-Cola and Dope we give them Dope, and when they call for Brain-Ol we give them Brain-Ol, if they call for a "Shot in the Arm" we give them anything we have got in the cola drink line. When a customer comes into our soda-fountain and asks for a dope or koke, I do not consider that he had made a definite and specific request on me to serve him with Coca-Cola only. We have handled this product Dope about three years, get it from Koke and Dope Company, New Orleans. We have a sign up, we dispense Koke and Dope, Coca-Cola, different things, that is immediately behind the fountain. We have changed that sign around several different times, we had at one time on the sign "No substituting here. We sell Coca-

(Deposition of E. A. Sharp.)

Cola and Dope, you get what you ask for." That was a big sign too, like that. We change it around on the glass, all of my customers know that we handle Dope and Koke and Coca-Cola, and all know that they are different. (Defendant's Exhibit No. 10 introduced.) That is one of our signs we used on the glass, a photograph of that sign. (Defendant's Exhibit No. 11 introduced.) Another photograph of the same thing, that is the last sign we have had on the glass. We had a call from a representative of the Coca-Cola Company, it has been about ten days ago, something like that. He came in to inform me that he had filed a suit against us for substituting. That we were selling something else for Coca-Cola when calls for Coca-Cola were asked for, that we were selling something else, **[959]** which we have never done. We never have substituted at all. We always had dope and Coca-Cola too, and he had a compromise that he agreed to compromise it if I would sign up the contract that I would not handle anything else but Coca-Cola, and on calls for Koke and Dope and "Shot in the Arm" and all these things, I would give Coca-Cola for it, it did not make any difference what it was, so long as it was the same color. He did not leave me a copy of the contract, but as well as I can remember there is something about the color of it. They asked us not to sell anything—but on calls for Koke and Dope and all those names, and similar drinks, that we should serve Coca-Cola on them, something like that in the contract, I do not remember exactly what it was. I

(Deposition of E. A. Sharp.)

signed it because I was not looking for trouble. I did not want to get into trouble and they threatened to file suit against me so I thouht I had to sign it. He wanted me to agree not to sell anything but Coca-Cola, any drink like that but Coca-Cola. The contract was typewritten I think, not in handwriting, it was printed. I asked him to send me a copy and he said "No, he did not have any copies anyhow and he did not give me any copy of it. At that time I had a little Koke and Dope, only I had given an order for some of it. I wrote a letter to the Southern Koke Company, Limited, at New Orleans, with reference to it. (Letter handed him.) Yes, sir, that is what I wrote.

Mr. LITTLETON.—We tender and offer in evidence as Defendant's Exhibit No. 10, which is a photograph of the sign on the witness' mirror behind the soda-fountain, reading: "Coca-Cola and Dope, ask for what—" I do not know whether it is "want" or "wish"—yes it is "wish," and Exhibit No. 11, which is another photograph of the same sign, and Exhibit No. 12, which is a letter dated February 5, 1915, written to the Southern Koke Company, at New Orleans, and signed by the Terminal Pharmacy.

I am not now selling this dope, I quit selling it on account of signing the contract with the Coca-Cola Company.

Cross-examination. **[960]**

I put up this sign about a month ago, I guess. We were handling then three or four different cola

(Deposition of E. A. Sharp.)

drinks. We handled Koke, and Dope, Coca-Cola and Brain-Ol, that is about all the cola drinks we have. We started handling this drink Dope and Koke about three years ago, ordered it from the same people to whom I wrote the letter that has been put in evidence here. It might be two years ago. We used to sell a cola, the Rock Cola, and Gay-Ola and Brain-Ol. I have always sold these other products when Dope and Koke were called for. When Coca-Cola was called for I gave Coca-Cola. When Dope and Koke were called for I did not give Coca-Cola. In my estimation Dope and Koke were always similar to Coca-Cola, because I remember, it seems to me it has been about 10 or 12 years ago, they used to have a dope on the market just about the same as Coca-Cola. Dope and Koke are similar to Coca-Cola because they both contain about the same constituents, caffeine. That is the reason people call it "dope" because it is a cola drink with caffeine. Before we handled Koke and Dope we used to handle a cola and perhaps when a man wanted a dope or a koke we gave him Brain-Ol, or Coca-Cola, anything we wanted. I do not believe I had Coca-Cola by itself, I always had something similar. If a man asks for Coca-Cola he wants Coca-Cola and if he asks for a dope he means most anything in that line. I gave anything we wanted to when they called it "dope," except Coca-Cola. We had a drink that did not cost as much as Coca-Cola. These other drinks cost us less than Coca-Cola and that is the reason for it, everybody does it.

(Deposition of E. A. Sharp.)

Every man in my town has always handled three or four different kinds of cola drinks, and I have had it on the fountain. We did not give the other drinks when people call for dope and koke because they look like Coca-Cola. If a man comes in and asks for Koke or Dope, I do not know he wants Coca-Cola. If they call for dope they get dope. Gay-Ola costs us less than Coca-Cola, and it is sold for the same amount to the consumer, there is more profit in it to us. It looks and tastes like Coca-Cola. We had a sign on the glass, "We serve Dope." We had the sign right there off and on ever since we started [961] handling it; we have been handling it about two years I think. When a man came and asked for a Dope or a Koke we take it for granted he meant a cola drink that that was a dope. Men would go there and ask for a dope and when asked what they wanted, they wanted a drink. I can name a few of them. I know the people they come in from the Benning & Fuller Whiskey House, I cannot give you their names but I can get their names. I would not be exaggerating at all when I say I have asked a thousand times what they wanted. I quit serving when the gentleman had me sign the contract awhile ago, I took the sign off the fountain then. We used to ask that question when the sign was on the fountain to get them to read the sign, and the customers I would ask would say "What is the difference between Koke and Dope and Coca-Cola?" And I would try to explain it. One sign we had said "Coca-Cola is made in Atlanta, and Dope is made in

(Deposition of E. A. Sharp.)

New Orleans," and it said at the bottom, "Ask for what you want." That was the difference I made between the two drinks, one was made in Atlanta and the other was made in New Orleans. That is about the only difference I could tell in the drinks. A lot of people think there is not but one cola drink in the world and that is Coca-Cola. When they called for Dope they got Dope regardless of the cost, that did not make me give it to them any quicker. We give them what they call for regardless of cost. When they call for Dope and Koke we give them Dope and Koke. We gave them various things when they called for dope and koke at first because they do not specify the different drinks, we were privileged to use what we wanted and naturally we gave the cheaper drink. I could always pick out something that satisfied. I do not say what people think because I do not know. We have had those cola drinks ever since we have been in business, for six years, I did not remember which one I had first. I have always heard there was a dope so far as that is concerned, which was different from Coca-Cola. I first seen it advertised right in Atlanta, 12 years ago, something like that. I do not know whose concern it was, I remember seeing the hangers on the wall. I never thought Koke and Dope were nicknames for Coca-Cola, not necessarily. My estimation of the term is that it is [962] a cola drink. Some people may term Dope and Koke as Coca-Cola but we never did term dope as Coca-Cola, unless they specifically said after asking for Dope that they

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wanted Coca-Cola. We would rather serve something else we made the most money on. I suppose I could sell Coca-Cola as Dope too, if I wanted to, you can use it as you like. I said I can serve anything I like when they call for Dope, it is not Coca-Cola. I consider the cost when I am selling it. We consider Dope applies to any cola drink as long as it is a dope. I do not know whether they are all cheaper than Coca-Cola, all that I have handled are cheaper. You can serve anything you like for Dope and naturally a man would give the drink he made the most money on. There was no excuse to it, we gave them Dope or Koke either one if they did not ask for Coca-Cola, they did not ask for Brain-Ol or Gay-Ola we gave most any kind of dope. We are always looking for something to make more profit and that includes the whole business. When the public commenced using the terms Dope and Koke, we could sell dope and Koke and I was glad it was there, I am glad to make more profit, naturally. All these drinks are similar in color and taste to Coca-Cola and are cheaper than Coca-Cola. Our customers knew we were handling Gay-Ola, we had Gay-Ola signs, they used to put out signs, the Gay-Ola people. A salesman came along selling Koke and Dope, I do not remember what he did say to me. He told me the Koke people would have the same right to prosecute us for substituting as we would have for substituting for the Coca-Cola Company. He said I did not have any more right to serve Coca-Cola for Dope than we had to serve Dope for Coca-Cola. I think that way

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about it now, I did not know of it being registered before these three years. I consider now that Dope and Koke represent Dope and Koke, before Dope and Koke meant a glass of drinks, we used it that way before it was registered. I said Koke and Dope were not definite terms for Coca-Cola. I think Dope and Koke are Dope and Koke and Coca-Cola is altogether a different name. I would not sell Brain-Ol for Dope and Koke when Dope and Koke were asked for now. I would not sell anything but Dope and Koke for this **[963]** New Orleans product now. I think they have the exclusive right to this Koke and Dope. We would be substituting if we sold any other product under that name. He said we would be substituting, the same as selling Dope for Coca-Cola, and as we would selling Coca-Cola for Dope. That they had Dope and Koke registered, the same Coca-Cola was registered, and I told him that we were serving Coca-Cola when called for and would serve Koke or Dope when Dope was called for. Dope and Koke was one product, he sold one product. He showed me the product the first time he came. I do not remember whether it was myself that bought the first time or not, I had a partner. I do not remember whether he sampled it the first time here, or what he did. I bought it because I thought I could sell it and make more money on it. I thought I could sell it under the name he sold it to me under, Koke and Dope. We had been serving something else all the time for Koke and Dope. We had calls for Koke and Dope before we put in the New Orleans product.

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This man said he had registered the trademark for Dope and Koke and this would protect us. This drink is cheaper than Coca-Cola. I do not know whether I read of all the agreement or not, I do not think I read all of it, I think Joe read most of it, I think I read about the color part of it, I read enough to find out I could not handle anything else but Coca-Cola because the representative told me he would file suit against me for selling something else. He said he would sue me for substituting Gay-Ola. We did not substitute Gay-Ola. I signed the agreement and I told him we did not substitute for Coca-Cola; that we had Koke and Dope and had Coca-Cola, that there was both in the soda-fountain and the one labeled Coca-Cola was Coca-Cola. The other was not labeled Coca-Cola. Mr. Littleton did not mention anything about what you were going to ask. He asked me some questions himself. I read enough of the agreement to understand that I could not sell Dope and Koke any more on the calls for Dope and Koke, because he said I was liable to prosecution. I did not see what the agreement said about nicknames for Coca-Cola. **[964]**

Q. Let me read to you from this—"Whereas, the party of the first part believes and know that the party of the second part has been, and may now be purchasing, handling and dispensing through his soft drink fountain, commonly known as a soda-fountain, a spurious and imitation product as and for Coca-Cola, in response to calls or requests of consumers patronizing his soft drink fountain for Coca-Cola,

(Deposition of E. A. Sharp.)

and particularly when consumers carelessly or otherwise call or request Coca-Cola by making use of several universally used nicknames, principal of which are the terms 'Dope and Koke.' "

A. Is that in there?

Mr. LITTLETON.—I want to make an objection to that, I want to object to the question and this contract because the contract has not been filed, and before he can properly cross-examine him on that I ask that he file that contract with the commissioner.

Objection overruled and appeal prayed and granted.

Q. Was that in the contract? A. I do not remember reading that in the contract. Q. You signed it did you? A. I signed it more on what he told me, what the man told me than anything else. I took his word for it. I did not want to have any trouble with them. I was not looking for trouble. I know the Coca-Cola Company have more money than I have. I did not know whether the Koke Company would have protected me or not. I was looking to them for something, I might as well look to them for protection as to the Coca-Cola Co. The Coca-Cola Co., guaranteed me that I would have protection if I would not sell anything else on calls for Dope and Koke but Coca-Cola. The Southern Koke Co., did not threaten to sue me because I sold Coca-Cola when Koke was called for. If I did that they had not threatened suit against me and the Coca-Cola Company had threatened to sue me because I would sell Koke when Koke, was called for. The Koke Co.

(Deposition of E. A. Sharp.)

said this is our trademark and you are substituting when you sell something else for Koke or Dope except our product, or something to **[965]** that effect. The Coca-Cola Co., showed me where somebody had bought some syrup and I spoke to the man who sold it and he told me he had sold Coca-Cola syrup. The representative of the Coca-Cola Co., said that he had bought some syrup from my place, he asked for Coca-Cola and my man said he had given him Coca-Cola. This representative of the Coca-Cola Company said that it was not Coa-Cola, that was the situation. I believed my man against the Coca-Cola man's because we had both syrups in the soda-fountain. I do not know that I can say I never had served any other drink besides Coca-Cola when Coca-Cola was called for because you are liable to get them mixed up in a soda-fountain. They are so much alike I think anybody is liable to get them mixed up. I did not say we get them mixed up, I said we are liable to. I think this man got two samples from my place, I don't know what he asked for. My boy told me he asked for Coca-Cola once, we don't know of the other time. We have different boys at different times. We kept those drinks first one place and then another, changing around on the fountain occasionally. We have two jars we keep Coca-Cola in labeled Coca-Cola, and two we keep dope and koke in. We have not got any jars labeled Dope. I can switch it around without mixing it up, that is take a jar up, and the pump out and put it on the other side of the

(Deposition of E. A. Sharp.)

fountain, that is the whole container with the other syrups, we change them around, we have to switch them around. If we put it by orange it changes the taste, pineapple the same way, each one will sour and we put it first on one side of the fountain and then on the other. Take Coca-Cola and let it set by orange for a month and it will taste like Coca-Cola. We exchanged the container and all, we may have Coca-Cola here and pick the pump and all up, and he could not have purchased Dope or Koke from this Coca-Cola jar. We try to serve them like they call for it. If we should make mistakes we do not do it intentionally. The pump from which the Coca-Cola is drawn is labeled Coca-Cola. We have never had labels for Dope and Koke, we use first one and then the other. I think the last we had **[966]** was in strawberry. We never put anything else in the containers labeled Coca-Cola besides Coca-Cola.

Mr. HIRSCH.—Now, Mr. Littleton, I want to offer in evidence that agreement that he signed, please sir. Now, I want to prove that, this is your signature, Exhibit 15, of complainant's testimony, to the testimony of E. A. Sharp, is that the agreement that you signed?

A. Yes, sir, that is it. I did not fill that in. I do not know, the thing was filled in at the top like this, I did not pay any attention to it. Matters of no more importance than that, I do not expect to read. I intended to cut that out and do what the man told me, for leaving off the sale of Koke and Dope it was of no importance. I told him it was not so very

much to me on account of the price, as it was just 25 cents difference in the price of the products, I would willingly keep out of it before I would have any trouble with the Coca-Cola Co. I did not draw that contract up. I do not know who drew the contract up. The printed part was already drawn up when presented to me by the Coca-Cola representative.

Deposition of Miss Marian Bloodworth, for Defendants.

MISS MARIAN BLOODWORTH.

Direct Examination.

Forty years old; live in Atlanta. Have lived here nearly all the time since I was about thirteen years, most of that time. My father was E. H. Bloodworth. My father came to Atlanta to go in business with Mr. Pemberton and Mr. Mayfield. He came here to go in business with Mr. Pemberton, Mr. Mayfield, and A. O. Murphy. I was living here with my sister when he came, he went in business with these parties, it was a medicine business, called the Pemberton Medicine Company. They came just before Christmas, it was 1887 that they came here and I think it was in the Spring that they went in business, just about it. They made Globe Flower Cough Syrup, Coca-Cola, lemon and orange elixir and Wine of Coca and some kind of hair dye, I do not remember that. Indian Queen Hair Dye, that was it. I used to go down to the place of business every few days, I drank that Coca-Cola they were making. They

(Deposition of Miss Marian Bloodworth.)

were making a dark brown red syrup, it tasted like Coca-Cola tastes now, and it looked like Coca-Cola. They had little kegs, I would call them for shipping [967] it out, they were painted red. They had "Coca-Cola" on them, they made this Coca-Cola three or four months, then they still made it and called it "Koke." Q. Did you hear a discussion among them? A. Yes, sir.

Mr. HIRSCH.—I object to what the witness heard as being hearsay and move to strike it from the record.

Objection overruled.

I have heard them discuss it. I heard my father discuss it at home a good deal, and of course they objected to Pemberton selling the Coca-Cola, but it seemed that his son sold it, that was my understanding, that his son sold it, and although they objected to it, it seemed that they sold it anyway, and after that they just began making what they called Koke, or something, calling it Koke. They spell that K-O-K-E. Mr. Murphy stayed in that partnership less than a year, I do not know how long. I know that we had come from the same town and I just naturally remember when they went back, they stayed here less than a year. My father and Mr. Mayfield continued to make it for several years, I do not know how long. Of course the business did not amount to very much, but it must have been for five or six years. My father has been dead four years in October. I was living with my sister, Mrs. Banks ,the wife of T. C. Banks. T. C. Banks was liv-

(Deposition of Miss Marian Bloodworth.)

ing in Atlanta during that time. My sister, just older, Mrs. Shelverton, and a younger sister were living here with me.

Mr. HIRSCH.—I now move to strike out as hearsay testimony all the answers and questions which related to what the witness heard, as hearsay and incompetent.

Exception overruled.

Cross-examination.

I know these three men went into business with Mr. Pemberton, and that was what I call a partnership, that was about 1888. I know they discussed it about October, before I know my father came up here. I was living in Atlanta and I just recall that they came up about [968] Christmas and discussed with my brother-in-law about going into business and that was some time after Christmas; I do not remember when they went into business but it was in the early part of the year 1888, I think, somewhere in the first of the year. Of course I was a very young girl. I remember it was after the holidays when my father came up and discussed it before they went into business, and immediately after this partnership was formed they made and sold a product under the name of Coca-Cola. I distinctly remember labels of Coca-Cola. It was the word Coca-Cola written, I think, in kind of block letters, I do not think it was script as it is now. The labels were pasted on kegs in one form or another, I just remember seeing it on top of the keg. After they quit using Coca-Cola they used those same little

(Deposition of Miss Marian Bloodworth.)

kegs I have referred to, I was down in the plant a great many times. The plant was on Pryor Street, South Pryor. My idea is it was where the Kiser Building is, right down next to the corner of Hunter & Pryor where Dorsey, Brewster, Howell & Heyman are, and to my idea it was that same building. Then they placed Koke on the kegs the same way. My father was interested at the time they were making Koke. Besides this Koke they made the same Globe Flower Cough Syrup and the Wine of Coca, and the Lemon and Orange Elixir and I do not remember about this Indian Queen Hair Dye. I remember that was in there originally, but after that I do not recall anything about that. I know Mr. J. G. Bloodworth, he was my uncle. He occupied the office of Justice of the Peace here. He used to have his Justice of the Peace Courthouse down here on Hunter Street, up on the second floor. He was Justice of the Peace about fifteen or twenty years. I know that he was Notary Public and Justice of the Peace of the 1026th G. M. District, Fulton County. That was the correct description of it. My father was E. H. Bloodworth. I do not know whether my father ever made any affidavit in regard to this business as late as 1905, I have not any of his personal effects left. They were all burned after my father's death, my sister burned them. (Reading affidavit:)

"Atlanta, Georgia, August 9th, 1905. **[969]** "In 1888, A. O. Murphy, of Barnesville, Georgia, Mrs. Diva Brown and myself bought Dr. Pemberton's formulas including Coca-Cola. Mrs. Diva Brown

(Deposition of Miss Marian Bloodworth.)

spent considerable time in our laboratory and took quite an interest in the business. A few months after we bought Dr. Pemberton's formulas, he stated to Mr. Murphy, Mrs. Brown and myself that he neglected to state to us at the time that he made the trade with us that he had sold the Coca-Cola formula to his son, Charles Pemberton, and Mr. Lowndes, and it should not have been included in the sale to us. Dr. Pemberton's deed to his son and Lowndes was dated a few days before the deed to us. Dr. Pemberton died soon after and we lost the Coca-Cola name. We used the formula and called our goods Yum-Yum, but failed to successfully introduce it."

A. I do not know whether that is true or not, my father never discussed it with me. I do have a faint recollection of the drink Yum-Yum, but I do not remember that they called the drink Coca-Cola that. I do not remember anything about a Mrs. Brown. The first part of it I do know is true, but I do not recall them making this drink and calling it Yum-Yum. That is very indistinct. I could not say, and I have no recollection that they called the drink they were making by the Coca-Cola formula, Yum-Yum, I never heard that. I have no idea whatever of what it was, my indistinct recollection is, it was a medicine. I do not recall Mrs. Diva Brown. I know there was a lady in the office, but I do not remember her name. I met Mr. J. C. Mayfield's wife. I do not know that she afterwards became Mrs. Diva Brown. It must have been the last of the year that Koke was produced, it was after they had sold out to Pemberton

(Deposition of Miss Marian Bloodworth.)

but I do not remember exactly about it. It was just as soon as they could, I know, for awhile they were undecided on a name. Mr. Murphy I think left about the last of the year, I think he left after they adopted Koke. They must have been in business about three or four months perhaps when they sold the Coca-Cola, then they began making Koke and it must have been about four or five months after they started business, five or six months, I would say. **[970]** The best I can say Koke was put on there like the word Coca-Cola, that the word Koke had been substituted for Coca-Cola on the packages. I do not know whether it was painted or on a label. My father and Mr. Mayfield continued after Mr. Murphy sold out for several years, I think it was 4 or 5 or 6 years. All that time they continued to manufacture and sell this product Koke. If my father ever sold out I never knew it. My idea was that it just simply did not amount to anything and my father was not making anything at it and really could not afford to keep it up and he simply worked on with his regular business. He had always been in the cotton business and he went on with his cotton business and Mr. Mayfield carried this business on. I recall father used to hear from him in Birmingham. My father was never actively engaged in it any more, because he could not afford it. He was not making anything out of it and he went into business where he could make a living. When my father went out of the business the machinery and material that they had on hand I think Mr. Mayfield took. I think he

(Deposition of Miss Marian Bloodworth.)

kept it in Atlanta four, five or six months. Of course that is hearsay. I remember afterwards father talking about it. I think he had it in a little place on Trinity Avenue for a good many years, Mr. Mayfield continued in business for a good many years. I just suppose he had been making all those things that they had been making, but if he was not, just what he dropped I do not know, but I do know my idea was that he kept on making all those medicines. While my father was with them they kept making Wine of Coca, and Koke, and I have heard him talk about Globe Flower Cough Syrup, Lemon and Orange Elixir, and possibly Indian Queen Hair Dye. I remember the Wine of Coca label. It seems to me it was put up in bottles. I recall a big bottle, kind of like a whiskey bottle, just about the size of a quart bottle, whiskey bottle, and I think it looked as if it was in script, as if it was in handwriting, Wine of Coca. I mean it was printed to look as if it was in writing. I do not know what was on the label, that is all I remember, just Wine of Coca. Father simply quit the business, so far [971] as I know there never was any sale. Wine of Coca was sold as a medicine. I never heard it used as a soda-fountain drink. I am positive Coca-Cola was made and sold under that name by Dr. Pemberton, my father, Mr. Murphy and J. C. Mayfield. I remember that distinctly and positively. I know they sold it in Atlanta. I do not remember the names of anybody they sold it to. I do know they sold it in Barnesville. I know afterwards when I was visiting

(Deposition of Miss Marian Bloodworth.)

Barnesville I remember the druggist telling me there that he had all of these things, Coca-Cola, Wine of Coca, this dye, and Globe Flower Cough Syrup. The Globe Flower Cough Syrup was a medicine. Wine of Coca was a medicine. Coca-Cola was a drink. I remember the druggist having told me that, his name was Blockman, I do not remember his initials, he is in Barnesville yet in the drug business. He was not in business for himself at that time, I do not remember who he was in business with. He told me he had it, and I saw it in the drug-store. I never saw any Koke there. I do not know what year it was, because I have always visited Barnesville off and on.

Deposition of Mrs. N. L. Shelverton, for Defendants.

Mrs. N. L. SHELVERTON.

Direct Examination.

Forty-three years of age; live in Waynesboro, Georgia. My father is E. H. Bloodworth. I am a sister of Miss Marian Bloodworth who was just on the stand. I did have papers belonging to my father. I was the oldest living girl and when my father died he just told me that his papers were in his trunk and that I should go over them and keep what I chose and destroy what I chose. Soon after my father's death we moved away from Atlanta and I destroyed all that I thought I wanted to destroy. We have been away from Atlanta about 4 years and papa died four and a half years ago. It was just after his death—I do not remember the month exactly, but somewhere about 4 years ago. Of course a great many of the

(Deposition of Mrs. N. L. Shelverton.)

papers were like any one of sentiment, a great many private letters and then a few business letters I kept, but then I destroyed some of them, regarding some of his business letters, business arrangements, I did not think I would have any further use **[972]** for them after his death. They were personal things as I felt. I did not destroy any papers without reading them, the paper that made the most impression upon me, that I hesitated to destroy, but finally did destroy, I am sorry, was this contract, and with this contract I also destroyed some cotton papers that have proved a loss to me since. He was a cotton man. This business contract, you know a woman is not much of a business person, I suppose you would call it an agreement. It was some kind of a legal contract, you know, regarding, I believe, my father and these other gentlemen; Mr. Mayfield, Mr. Murphy, Mr. Pemberton and my father and those others who put up their money against the doctor's medicine, against Mr. Pemberton's medicine, I mean, and I thought that was a man's duty—and he was dead, and of course his contract was nothing of mine. I remember some of the names of some medicines in that contract. Of course the one that made more impression upon me than anything else, there was a hair dye called Indian Queen Hair Dye, a Globe Flower Cough Syrup, a Lemon and Orange Elixir, and, let me see, Wine of Coca, of course I remember them and not only that, I remember the taste and everything regarding all these things, and naturally at his death I just threw the papers away. It had Wine of

(Deposition of Mrs. N. L. Shelverton.)

Coca and Coca-Cola in it, and of course that is the name that impressed me most because it was then so much before the public. I do not remember the date of the contract. Of course, at my time of life it came in, when it all happened, I remember that, but I do not remember the date on the paper. I just wanted to say that we were reading, there were several of us, we were reading, and I did the reading, that is why. Some of those that were present when I read them were my nephew and my niece. My niece's name was Mrs. Frances B. Thompkins, and Charles E. Banks was the nephew and we were sitting there and I was destroying and reading them aloud.

Cross-examination.

That was the Mrs. Frances B. Thompkins who used to live in Atlanta, she lives in Waynesborro now with me, she is a widow. My nephew, Charles E. Banks, I do not know his address, but he is in Chicago. **[973]** He travels for some tobacco firm, I think, I do not know whether it is a medicine company that had a side-line of tobacco or not. The last time we heard—it seems to me he had extracts, some kind of patent stuff he sold in our country. I could not tell you to save my life, and the only reason I know that is I found a little sample case which he did not take with him, and I know there were samples in it. I have not his present address. I last saw him two years ago in Newman, Ga. The last time his father heard from him he was in very bad health and not in any business at all. When I saw him last he was traveling. His father lives at Waynesborro, he

is very ill. The parties to that agreement were Dr. Pemberton, Mr. Mayfield, Mr. Murphy and my father. The medicines described were Indian Queen Hair Dye, Globe Cough Syrup, Lemon and Orange Elixir and Wine of Coca, and Coca-Cola. That was a syrup, I have been to the factory where they sold it. Wine of Coca was made for a medicine, but I understand it is used for a beverage. My husband is a druggist and he said when a man could not get whiskey he would use it.

Mr. HIRSCH.—I object to the foregoing answer and move to strike same as hearsay and not responsive to the question.

I just remember the name, but cannot say about the taste of it, I was about 18 years old along about that time. I remember distinctly when they made that agreement. It impressed me so because when I read it we all began to lament that my father did not have enough foresight to keep Coca-Cola. Coca-Cola had been such a success, you understand, and we knew that if our father had kept it and advertised it as it has been advertised we would have been where Candler is, and naturally we have a grudge against him for it, as he has what we ought to have now.

Deposition of Mrs. Frances B. Thompkins, for Defendants.

Mrs. FRANCES B. THOMPKINS.

Direct Examination.

I am twenty-nine years old; I live in Waynesborro, Georgia; my father is T. C. Banks. Mrs. Shelverton

(Deposition of Mrs. Frances B. Thompkins.)

who was just on the stand is my aunt. I was present after the death of Mrs. Shelverton's father, when she [974] was looking over some of his papers, she and I were living in the same home, it was just about three and a half or four years ago. Mr. E. H. Bloodworth was my grandfather, and my mother was the oldest child, he had lived at her home more than anywhere else and I was living at home at this time. It was after my mother's death and grandfather's death—I am a widow and live with Mrs. Shelverton. We were there cleaning out my grandfather's trunk, and we were going through to see if there was any of grandfather's papers we wanted, and so she picked up this paper, contract, some sort of legal agreement, I could not tell you exactly what it was. She read it to me and my brother sitting there beside her. She said, "Here is this old contract between my father and Mr. Pemberton," and in this contract were enumerated numerous articles, that were to be manufactured, and among them was Coca-Cola, and she read out the word Coca-Cola, and she said to me, "Isn't that awful to think that my father did not keep that." She said, "Think what we would have had to-day if he had not sold his formula to them, but had kept on manufacturing Coca-Cola," and she said, "Isn't it a shame that my father sold that, and that we are not making Coca-Cola to-day." I remember the names that were signed to that contract because she read them over to me and said, "Look at this; it looks almost like lithographing." My grandfather's name was there and I think it was signed by

(Deposition of Mrs. Frances B. Thompkins.)

Mr. Murphy, my grandfather, Mr. Bloodworth and Mr. Mayfield. I have no idea of the date of the contract. After she read it it was tossed and thrown into the fire with some other papers and books that we had. We had no use for it and were getting rid of all his rubbish.

Cross-examination.

I remember distinctly Coca-Cola because that was the impression which was the most foremost in our minds. I cannot remember but one other thing that was in there except Coca-Cola, and I know it had some Globe Flower,—I was right there beside her and she turned the paper to me. I glanced at it hurriedly, I did not read far into it again, that paper was destroyed. [975]

Deposition of L. A. Holley, for Defendants.

L. A. HOLLEY.

Direct Examination.

Sixty-one years of age; I live on Cleveland Avenue, Atlanta. Have lived there 17 years. Before I came here I lived at Roanoke, Alabama. I know Mr. Mayfield, first knew him in Alabama. I guess he was possibly 6 or 7 years old when I first knew him. I have known him practically all his life. I was in the cattle business along through the nineties, at Roanoke, Alabama. I came to Atlanta during that time. I went around to see him once, it was along in the '90's, somewhere after '90, sometime, I suppose, it was some 5 or 6 years before I came up here to live. It has been 23 or 24 years ago, as well as I can re-

(Deposition of L. A. Holley.)

member. I went around to his place of business hunting him up. It was on the south side, I am not familiar with the streets, and I could not name the streets. He was manufacturing some drink at that time, it was labeled Koke. I drank some of it, it was not syrup when I drank it, but he poured the syrup in it. It tasted something like Coca-Cola, it seemed something about the same color as Coca-Cola, a kind of dark-brown color, something like that. I went through his place with him. The receptacles as I remember, were kegs, possibly some jugs, I do not remember all about it. These kegs were painted red. This Koke label must have been on the keg, on the head of the keg. It was spelled K-O-K-E. It was printed in block letters. I have met him occasionally, seen him at different times ever since. I do not remember what businesses he was in personally, only what he has told me.

Cross-examination.

I came here from Roanoke, Alabama. I was born in LaGrange, Georgia. I went to Talladega, Alabama; from Talladega I went to Rock Mills, Alabama, then I went from there to Roanoke. When I left LaGrange I was about four years old. I think I lived in Talladega about 10 years, I then went to Rock Mills and lived there about 20 years, and then I went to Roanoke and lived there up to 17 years ago. Mr. Mayfield was living at Rock Mills when I first knew him, I do not know how long he lived there, he left me there, I met him at Rock [976] Mills as a boy. I met him here in the '90's, about 5 or 6 years

(Deposition of L. A. Holley.)

before I came to Atlanta; I won't state that positively, that has been a good while—I do not remember the year. I came here 17 years ago, that will be 1898. When I came up here I went around to Mr. Mayfield's place of business. I do not remember the street it was on, the south side, somewhere. I could not point to it now, somewhere in the neighborhood of Forsyth Street. This Koke label looked like block letters on the barrel. I was not paying any special attention to it. I remember the barrels and kegs were labeled. The word Koke was on a piece of paper on the barrel but I don't remember about the size or shape. I remember there was the word Koke on it. The reason I noticed was the way it was spelled. I was there around his place of business, not all through, just through there where he was working, I was in the office. I could not tell you everywhere I went that day. I may have sat down in the office and may have got up and walked around somewhere else, but I was in his place of business. I saw several barrels labeled "Koke." This "Koke" was on red kegs, there were other persons around there, I do not remember who they were. Mr. Mayfield was married. His first wife's maiden name was Talliferrio. I don't know where she came from. I knew her when she was a girl. They were married at Rock Mills while I was there. I do not remember when they were divorced. I do not remember anything about that at all. Mr. Mayfield was married when I came to Atlanta to pay him a visit. I think that was the same wife he had at Rock Mills, I did

(Deposition of L. A. Holley.)

not meet her over there that day, nor any time after that. I do not know whether the then Mrs. Mayfield was divorced from her husband or not. I do not remember any other kind of drinks being down there, that was the only one I paid attention to. I did not pay any attention to the drink they called Celery-Cola at that time. I did not notice anything else. Since I came here to live I worked for the Metropolitan Insurance Co. I have been working here for 11 years for the Home Art Supplies Company. Prior to that I worked for the Metropolitan Insurance Company and in [977] some department stores and worked all around for 5 or 6 years and then went with the Home Art Supply Company and have been there ever since.

Deposition of A. O. Murphy, for Defendants.

A. O. MURPHY.

Direct Examination.

Fifty-nine years of age; live in Barnesville, Georgia; have lived there with a few intermissions, first Macon and then Atlanta, since 1871. I am a fruit grower and a farmer. I knew of J. E. Pemberton, of Atlanta, Georgia. I first met him in 1887. My first introduction to him was through an advertisement that he had in the Atlanta Constitution in something like, I think it was October, 1887.

Q. I hand you a certified copy, being a photograph of page 13 of the Atlanta Constitution, of October 2, 1887, and ask you to point out there where the ad—just read the ad that was there, if it is not

(Deposition of A. O. Murphy.)

too fine to read. (Defendants' Exhibit No. 13.)

A. This sounds like it: "Wanted: An acceptable party with $2,000 to purchase one-half interest in a very profitable and well-established manufacturing business, absolutely no risk, and guaranteed a 50 per cent profit on investment, with possibilities of much larger profits and rare opportunity to right party. A full investigation solicited. For particulars address, with your name, "Business; 8½ Marietta Street, Atlanta." When I saw that advertisement I wrote to that address there, got in correspondence with him. I suppose we passed something like half a dozen letters.

Q. I hand you a letter dated October 4th, 1887, signed by J. S. Pemberton, which we will mark Defendants' Exhibit No. 14, and ask you to examine that and say whether or not that is one of the letters you refer to? A. (Examining letter.) Yes, sir; this is one of them, and it occurs to me this must have been the letter in answer to my first letter to him, in other words the first correspondence I had with him. Q. I hand you another letter dated October 8, 1887, and signed by the same man. J. S. Pemberton, marked Defendants' Exhibit No. 15, and ask you if that is one of the letters you speak of? A. (Examining Defendants' Exhibit No. 15.) This is just a continuation of the same correspondence. **[978]** Another letter dated October 20, 1887, signed by J. S. Pemberton, marked Defendants' Exhibit No. 16, is the same thing; another letter marked Defendants' Exhibit No. 17, dated November 25,

(Deposition of A. O. Murphy.)

1887, signed by J. S. Pemberton is another one; another letter dated Atlanta, Georgia, December 18, 1887, signed J. S. Pemberton, marked Defendants' Exhibit No. 18, is another; another letter dated at Atlanta, Georgia, December 18, 1887, I do not believe that is signed; that is only part of the letter marked Defendants' Exhibit No. 19, is a continuation of the same correspondence; another letter dated December 30, 1887, marked Defendants' Exhibit 20, and signed by J. S. Pemberton, is a letter, correspondence, after I was up there. He had moved out to Edgewood then. Those letters were in my possession up to a few months ago, when I gave them to Mayfield, something like 6 months ago; when was it, 6 months ago—it was some time last year I turned them over to Mayfield when he was down in our town. They have been in my possession ever since their receipt until I turned them over to J. C. Mayfield. They were the original letters of the correspondence opened up by that advertisement. In December 1887, I finally moved to Atlanta and with Mr. Mayfield and Mr. Bloodworth, who was another townsman of mine, formed a partnership with Dr. Pemberton, under the name of Pemberton Medicine Company. When I first came to Atlanta I found Mr. Pemberton doing business down on Marietta Street, I have forgotten the number. He had an office in front, a laboratory in the back and in the basement he was making Wine of Coca, Coca-Cola, a cough syrup of some description and I think perhaps a hair dye and a preparation of

(Deposition of A. O. Murphy.)

some kind made from ginger, called gingerine, something like that, I think that is the list. The appliances he had back in his laboratory was a large settling tank, a bottle-washing arrangement and bottling contrivances of some kind such as you would have for preparing a medicine or drink. There was nobody with Dr. Pemberton at that time, associated with him in business that I knew of. He was making these preparations in a small way only when we come there. The first time I ever visited him he carried **[979]** me back in his manufactury, where he manufactured a bit in a small way. My first correspondence was between Pemberton and myself. Afterwards I drew into it my friend Mr. Bloodworth, E. H. Bloodworth, who was of our town, a personal friend of mine, and also a partner at that time, and after we arrived in Atlanta, before we consummated the trade, we met Mr. Mayfield, J. C. Mayfield from Alabama, who had also been in correspondence with him in reply to that advertisement in the Constitution, so after a conference between Mayfield, Bloodworth and myself, he came into the deal, and we formed the partnership, all four, Pemberton, Bloodworth, Mayfield and myself had equal partnership. We each one of us three were to pay $2,000 cash into the concern and Pemberton was to have an equal interest and put up his laboratory, office fixtures and formulas, business, goodwill, and one thing and another as an offset for the $2,000 each one of us put up. The formula for Coca-Cola was included in that transaction. I drew up the partner-

(Deposition of A. O. Murphy.)

ship contract, what you might call a business agreement, stating the terms of the partnership, such as is ordinarily drawn up on occasions of that kind. It occurs to me I drew it up under the direction of Judge Simmons, my father-in-law, Judge T. J. Simmons. He was living with me at the time; I think I acted in accordance with his directions and it seems to me I wrote it, I am not sure about that. It was a long while ago. I moved here in December, '87, it seems to me it was wound up some time in January, about the middle of the following January. I left the contract with Mr. Mayfield and Mr. Bloodworth when I sold out. I had charge of the office up to that time. I kept it in my possession but of course all of the office papers were then turned over to them. After we formed this partnership we continued to manufacture down on Marietta Street a very short time and then we moved up on Pryor Street, Pryor and Hunter, and continued the manufacture there, right in the second story. My office was at first on the lower floor and afterwards we moved the whole thing upstairs. When I came up here and met Mr. Pemberton, no persons by the names of Lownes or Venable **[980]** were associated with him to my knowledge. They were not making this product Coca-Cola at that time to my knowledge. Mr. Pemberton did not tell me that he had sold out this Coca-Cola to either of those parties nor to some parties named Walker or Dozier. I never heard of Walker except in a very indefinite way, so far as my recollection goes. He must have

(Deposition of A. O. Murphy.)

been a salesman on the road at one time for them, something of that kind I heard Dr. Pemberton refer to him. I never saw him in my life, or Lownes, either. He did not tell me he had sold it to Mrs. Dozier. I never heard of that name before. We continued to manufacture this product right along, as soon as we could get in possession and get things shaped up. We sold the entire line, except the Globe Flower Cough Syrup and then we commenced I believe after that, including that in the line; gingerine, we also sold that and the hair dye. We did not press that much, but the Wine of Coca, it was a Wine tonic, put up in quart bottles, and Coca-Cola, the fountain syrup, and the gingerine were the three we pressed more than any others. I am acquainted with the color of Coca-Cola syrup to-day. The color of that syrup was identical with the color of Coca-Cola syrup to-day and about the same in taste. I drink very little Coca-Cola, but I do not detect any difference. The color and taste of that product we were manufacturing then under the name of Coca-Cola was the same as far as I can see as that now manufactured by the Koke Company and called Koke. We manufactured and sold this product Coca-Cola under that name. Something like a couple of months or perhaps it might have been more than that, or three months after that, this controversy with the old doctor in regard to Coca-Cola in connection with his son Charlie came up. This old doctor Pemberton had a son named Charlie Pemberton. He was helping him and just kind of helped in the

(Deposition of A. O. Murphy.)

manufacture when we took charge of the business. Then he sprung the question on us that he had sold the right to make Coca-Cola to his son Charlie. Really the way he expressed it, Charlie had, on certain occasions, obtained a written sale, a bill of sale, of this Coca-Cola drink and he would have to conform to it, but he would get us **[981]** up a substitute whict would be identically the same thing under a different name. Then arose the controversy in regard to that part of the business. This substitute he mentioned was not a different product from the one that we had heretofore been manufacturing, except in name. We first started out with the name called Yum-Yum, and then we got on to one or two others, Koke, and I think perhaps we got something into Dope too, something like that. This name Koke was kept up after I left the concern, spelled K-o-k-e. I do not remember who suggested that name. I took it for granted, however, Mayfield or Pemberton would, for they were in charge of the laboratory, I was not, I was the office man. We had a discussion about trying to keep the name Coca-Cola. One would naturally suppose we had quite a row over it among the partners, but the whole gist of the thing is this, after we had gotten our hands into the first and consummated the trade and got to work, and as I stated some little while ago, we found out to our sorrow that Dr. Pemberton was a drug fiend, and that of course, was distasteful to any business man, and then it grew from better to worse and the crowning act was when he violated his contract in regard

(Deposition of A. O. Murphy.)

to this Coca-Cola syrup, and we of course had quite a warm time of it for a little while and he had to try to pacify us with the idea that we put out identically the same thing under a different name, and at that time most anyone acquainted with the history of these drinks knew about that time *with* Coca-Cola. Wine of Coca or none other of these drinks were very prominent. They were all in their infancy, in fact that drink idea, soda-fountain drink idea was in its infancy, and rather than break up the whole thing and create a row among partners you might say we tacitly and silently went to work to see if we could offset it in some other way; as I remember it; that is about as near as I can state it, or in as plain words as I can make it. We held to Koke after we used Yum-Yum a while and abandoned that, and then agreed on Koke, and Mr. Mayfield continued after I left the business. Koke was adopted for the product in the spring of '88. I could not specify the day nor the **[982]** month, it is too far back. The product was all labeled whether it went out in the shape of kegs or barrels, we did not use much barrel stuff, of course, then, we were too little. Sometimes it went even in smaller quantities than that, and when put out it was of course labeled just like Wine of Coca was labeled, labeled with this word Koke. Those barrels and kegs, to my recollection, were painted just common red. When we formed this partnership and Mr. Pemberton turned over his goodwill, his business, and all of his formulas that were specified in that general

(Deposition of A. O. Murphy.)

partnership agreement that we had, everything from labels, stationery, in fact we used the old stationery for some time, until we could get our new stationery printed up and under the name of Pemberton Medicine Company. The labels were turned over to us, hauled over by the wagonload—cartload. Dr. Pemberton and Mr. Mayfield had charge of the laboratories. Of course I was in them off and on and aided myself in making it with them, but they were recognized as the head of the laboratory department. Mr. Bloodworth was on the road. Mr. Mayfield knew the formula for making the product, that was done when Dr. Pemberton was at home. Mr. Mayfield was the practical man in the laboratory. Dr. Pemberton was simply directing him. The way we used to make that product we took the actual extract from coca leaves, it was black as tar and strong enough to knock a bull down, and then the extract from the cola nut, and mixed those two with certain preparations, with this syrup, and made it from that. We bought the actual leaves themselves.

Q. Now, after you had formed this partnership, do you remember whether or not you wrote a letter to the Patent Office on the stationery of the partnership, asking to have a label or something of that sort copyrighted or registered in the Patent Office for a product named Lemon and Orange Elixir. To refresh your recollection, I hand you a photograph of a couple of letters? (Passing same to witness.) Defendants' Exhibit 21, that whole batch of several pages is the letter written by me. That is the sta-

(Deposition of A. O. Murphy.)

tionery we had at that time, the **[983]** date of that letter is March 8, 1888, that picture on the left of the letter-head there is a picture of the cola plant, the old doctor had a cut of it, you know, and we incorporated it in all of our stationery, on our letter-heads, and I think it is on the labels that we pasted on the Wine of Coca. I am not sure of that. We tried to carry that through it, you know. That picture there is the picture of the coca plant. At that time there seemed to be quite an interest in the extract of coca leaves and cola nut as a nerve tonic, is my recollection, and soon after we got over on Pryor and Hunter Street, we found out that Thurbee Wyler & Company of New York were putting up a Wine of Coca that they were calling "French Wine of Coca." We got into correspondence with them. It seemed that it was up there in New York City too, the effect of the extrat of coca leaves upon the nervous system, and we at once thought of stopping them in that, and we did carry on considerable correspondence to the extent of getting the legal opinion of the Hon. H. J. Hammong, who was a personal friend of mine, and also of my father-in-law. I went to him as advisor and told him I would rather pay him to tell me whether I was doing right or no, than go into a lawsuit, and I paid him $40 for him to tell me not to go into the suit.

Mr. HIRSCH.—I object to what anybody else told Mr. Murphy, and move to strike the same from the record.

Objection overruled.

(Deposition of A. O. Murphy.)

We attempted to have them stop, but we abandoned it. I only mentioned that to show that coca extract was at that time considered a nerve tonic all around. We advertised that feature of it as strengthening the strength of the nervous system. The public at that time knew about the coca. (Paper marked Defendants' Exhibit No. 22.) This is a paper covering the dissolution of the partnership so far as that is concerned, an agreement between the four partners consenting to my retiring and the assuming all the obligations and everything in the business. In the caption of that contract the date is mentioned **[984]** there when the partnership was formed. I suppose this is the exact date the partnership was entered into, or it would not have been specified in the agreement. It shows there as January 14, 1888. The agreement or partnership agreement is the one mentioned in the dissolution paper, that is the original paper, written by my brother, who was a lawyer. My brother was A. A. Murphy. I recognize those signatures on there as genuine signatures of the parties. That paper has been in my possession since it was executed, until I turned it over to Mr. Mayfield with this other correspondence, that was some time last year. (Defendants' Exhibit No. 23 purporting to be a label of French Wine of Coca.) This is the label we used on the wine tonic, Wine of Coca. We put the extract into the wine in place of putting it into a syrup and this went into quart bottles. This is the label on the bottle. I know what Coca was after

(Deposition of A. O. Murphy.)

I got into the business. The general public heard of it through these preparations, of course. I had seen the Coca and Coca-Cola, and had tasted it, or used it, but that was the only way I was familiar with the plant until I became actually interested in the business itself. I never saw the coca leaves until I came to visit Dr. Pemberton in consummating the trade, and then he showed them to me. I was not familiar with it until then. The business was limited for several reasons, because there was not enough money to push them, but the trade was considerably scattered over the country, understand, but the volume of the business did not amount to a great deal. I believe his books showed two years there when they had done a good deal, where they had been very heavy, and I had access to all of those, the whole thing was turned over to me. I had the old books, inspected them before I went into the partnership, as to the value of the business, etc. I could not give you an accurate opinion in regard to the extent of the Coca-Cola business as to the sale of this Coca-Cola, and later on the product Koke, the extent of the sales of that product while I was connected with this partnership. You see it has been something like 25 years. Our business was modest. Very modest business on account [**985**] of the resources that we had then to push it, but we were pushing it so far as our resources would go. I could not give you the volume of the business from memory. I have no means of refreshing my memory about it. It was not sold exclusively in Atlanta. We had two

(Deposition of A. O. Murphy.)

traveling men on the road; Mr. Bloodworth traveled Florida, Georgia, the Carolinas and Alabama—not in Alabama. We had been out in Alabama, it seems to me, we went into Texas and then up into the Carolinas, Kentucky, Tennessee and that would be about the extent of the states we covered, in a way. It seems to me that our Mississippi man went into Texas a little; not a great deal, perhaps he went across into Texas some, but I would not be positive as to that. I think, perhaps, he did. I do not know of any other product, prior to the time we adopted this name "Koke," of that name. I cannot say whether the general public at that time had adopted any nicknames for Coca-Cola. I say it is very natural. Perhaps one might be used interchangeably with the other—might be nicknamed for the other. If I had been on the road, a salesman, perhaps I might have run against a thing of that kind. The Coca-Cola product at that time was not extensively known. The business had not reached any considerable volume. It was, you might say, in its infancy along there. I cannot say as I ever heard the word Koke applied to that product at or prior to the time it was adopted by us. We adopted the name Koke because it was the best way out of the emergency that we could see. We racked our brains to get up something with which we could meet the emergency, and that was the solution. Our idea in meeting the emergency was to still retain the thing that we had bought in some other way if we possibly could, to meet the emergency that was sprung upon us by

(Deposition of A. O. Murphy.)

Dr. Pemberton. He was violating his contract in regard to this particular preparation. In adopting the name Koke our idea was just such things as would influence a business man in an emergency of that kind. I would not undertake to state that this think or that thing influenced us to make a move of that kind. This may have been instigated by business interests, such interest, such influence as would control any business man in making [**986**] a business move in an emergency. I had never heard at the time we bought this Coca-Cola from Dr. Pemberton, and at the time we were doing business, up to the time he had sold it, of anyone else besides Dr. Pemberton making this same product and selling it as Coca-Cola. I knew of no string on his right.

Mr. LITTLETON.—We offer and tender in evidence Defendants' Exhibits No. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 as evidence on behalf of the defendants' in the above-styled causes. We did not know anything of this sale until after it was claimed it was consummated. I suppose I had met Mr. Mayfield's wife. They lived in a different part of the city from us and perhaps I had been introduced to her by Mr. Mayfield I just knew her as his wife. She had no interest in the business at that time or during the time I was associated with it, whatever, nothing to do with it.

Deposition of Lee Hagan, for Defendants.

LEE HAGAN.

Direct Examination.

Forty-six years of age; live Atlanta, Georgia; lived here 46 years. Engaged in manufacturing syrup and soda water for about 27 years. I am now manufacturing just a general line, ginger ale, root beer, lemo-lime, Ko-Nut, Afri-Kola. I have been making this Afri-Kola about five years. I have been making Ko-Nut about 4 years. The color of Ko-Nut syrup is similar to the color of Coca-Cola and the other cola beverages on the market. I made a similar product of that character before I began making this Ko-Nut and Afri-Kola, called Dixie. I manufactured that, I would say, two or three years. The Dixie was the first I made of the cola drinks, that was about 10 or 12 years ago. I sold them continuously from the time I began to manufacture it up until the time I quit making it. I handled other products. I have been bottling soda waters 27 years. I have bottled some Coca-Cola, once, I believe it was in '87. I bottled it just a short while. I had no connection with the manufacturing, bottling and selling of soft drinks prior to the time I have just indicated. I have done everything in the bottling business from driving the wagon up to bossing the shop, 27 years continuously. I have studied the business in its details, and competitive business and [**987**] drinks that have been on the market. It has worried me considerably sometimes. I cannot say how many caffeine preparations there

(Deposition of Lee Hagan.)

are on the market at the present time, except I know there are a good many of them. There is several right around this locality such as Cherro-Cola, Gay-Ola, Rye-Ola, True-Cola, Mi-Coca, Joy-Ola, Glee-Ola and I got a new one out last week in Mobile called Mo-olo, and one will be out next week here in Atlanta, one called Alcola, Uncle Sam. I have known of cola drinks, these caffeine drinks, not counting Coca-Cola, for about 16 years. I got into the Afri-Cola 16 years ago. I knew of that, of course, at that time and there were one or two other syrups on the market of the nature of Coca-Cola, Wine of Coca was one of them, and I have forgotten what the others were, there were several at that time. Wine of Coca was originally a medicine but they afterwards made it into syrup form and put it on the market as a soda-fountain drink, that is my recollection. That has been a long time ago. These cola drinks at one time were confined to Atlanta so far as I know. They seem to be scattered all over the United States right now. I have never seen a cola drink that was not of the same general color as our product and Coca-Cola are to-day. They are all colored with caramel coloring and some are a little darker than the others. I color our product with caramel coloring. Caramel coloring is cheapest and it carries with it some flavor, and it is of vegetable origin and stands the acid better than anything we can get. We could not color it pink or green neither because it would not stand the phosphoric acid, and to use either one of those it would have to be an

(Deposition of Lee Hagan.)

aniline color and that is prohibited by the United States. We color it a dark color instead of coloring it a light straw color, because using caramel coloring in the quantity we do we get a flavoring that we would not get otherwise. The barrels and kegs we ship our product in are painted red, I believe we have always used red paint. We had to paint them some color and that is about as cheap a paint as you can buy, it is the most durable and attractive. We just started painting our barrels for Red Rock Syrup; [**988**] it seemed to go along with the name. I am familiar with the manufacture of syrups with reference to the specific gravity of syrup. If you used the same quantity of sugar and the same quantity of water and the same temperature it would be exactly the same. The temperature affects the gravity. You take any soda-water syrup and mix it in different proportions of carbonated water, the flavor will be different, vary of course. You use the same syrup, and same carbonated water and the same quantities of each it will be the same all the time. The taste of a soda-water drink is effected by its temperature and how high or how low the water is carbonated. I have heard the words Koke and Dope. The first time I heard such expressions was when I first became connected with the Afri-Kola business. I heard that expression through our traveling man, Mr. Harris. We received an order from a customer of ours in Memphis, I believe it was, to ship a keg of dope. I did not know what it was. I asked Mr. Ferris about it

(Deposition of Lee Hagan.)

and he said that was a name that they called the cola drinks in Memphis. The first time I ever heard the expression.

Mr. HIRSCH.—We object to what anybody told Mr. Hagan.

I had never heard the word dope applied to soda-fountain beverages before that time. There was a concern here in Atlanta once that used to put out a product under the name of Dope, the name of that concern was Dope Company. I think they labeled their bottles Dope; they advertised their product in Atlanta, I do not remember how extensively. It was a caffeine drink, one of these cola drinks. It was similar in color and taste to Coca-Cola. This concern in Atlanta put out these goods under the name of Dope 12 years ago, to the best of my recollection; it might have been 8 or 10, but I think it was about 10 or 12. Prior to that time I think I had heard that name applied to Cola beverages, principally to Coca-Cola; it seemed to be applied to most any Cola beverage. I do not know whether any other concern had prior to that time ever labeled any product with that name or advertised any product under the name of Dope. The word Dope generally means [989] a Coca-Cola drink. By a Coca-Cola drink I mean a cola or caffeine drink. I would not say it applied to any specific drink, it is more to a class. I do not think it specifically applies to the Coca-Cola drink manufactured by the Coca-Cola Company, manufactured here in Atlanta. Last spring we had our attention called to surveillance of

(Deposition of Lee Hagan.)

our plant here in Atlanta by people purporting to be representatives of the Pinkerton Detective Agency. We had a little trouble of that kind; our foreman reported there was someone following our teams to the depot and inspecting them and offered to pay him to let him take the names off the packages, to whom the shipments were going to, and wanted to know what about it. I told him to go ahead and take the money and they paid him and took the names off the packages. They did that for several days and also took photographs of the dray and packages. He asked them what they wanted with it but they would not give me any satisfaction. I tried to have one arrested but could not get him arrested. I followed one of them and he went to the Pinkerton Agency in the Candler building. I think Candler, Thompson & Hirsch's office is in the Candler building. I do not know whether the Coca-Cola people have an office there or not; I think their office is in another building on Marietta Street; it is off Marietta Street, Magnolia Street. Some of our customers have reported representatives from the Coca-Cola Co. had been around to see them. In some instances they had them to sign an agreement to discontinue using our product, and use Coca-Cola exclusively in the future. I do not know by what means they procured the signing of this contract; I have read those contracts. We sell our product at a dollar a gallon delivered. I do not know what the Coca-Cola people do. Our customers have written us that the Coca-Cola Co. has threatened them with

(Deposition of Lee Hagan.)

lawsuits if they continue to handle our product.

Mr. HIRSCH.—I object to the writing as being hearsay and incompetent testimony and move to strike the answer.

Objection overruled. [990]

I knew Wine of Coca before I got into the bottling business; it was a medicine then and as a syrup about 20 years ago; that syrup at that time the drink made therefrom was about the same in color and taste as the color and taste of Coca-Cola. I think Mr. Candler knows that I am in business here; Mr. Asa G. Candler, the president of the Coca-Cola Company. I expect he has known it about as long as I have, so far as I know; he has known over all that time all the time I have been making and handling these cola beverages that I have been engaged in that business of making them. He has never sued our company or taken any steps to oppose our right to manufacture our product and sell them. The Coca-Cola Co. has never taken any steps against our company to contest our right to manufacture our syrup in the way we do and sell it in the way we do.

Mr. HIRSCH.—We admit on the part of the Coca-Cola Company that Mr. Lee Hagan has been in business as long as he says he has been in business and that it was known by the Coca-Cola Company that he had been in that business.

Cross-examination.

The time I bottled Coca-Cola, the company was known at that time as the Capital City Bottling Works; I was with L. P. Thomas; I never was con-

(Deposition of Lee Hagan.)

nected with Whitehead; that was the product made by the predecessors of the Coca-Cola Company; that was before Mr. Candler became connected with the Coca-Cola Company.

Redirect Examination.

I bottle Ko-Nut now. The Ko-Nut bottle is entirely different from the Coca-Cola bottle; it is about a third longer; it is a tall, slim bottle; it is nothing like the shape of the Coca-Cola bottle. I have been using that type of bottle about 8 or 10 years; that is the only cola drink I bottle. Prior to the time I bottled Ko-Nut I bottled Dixie; that was put up in the old Hutcheson stopper bottle, before the crown bottle came in use. The crown bottle came in use about 14 years ago, I think, here in Atlanta. A good many bottles have a special shape for their own, but the bottle used by the Coca-Cola people at this time [991] is very similar to the soda-bottle used 25 years ago by all bottlers for bottling a general line of soda water.

Recross-examination.

I never met Mr. Mayfield in my life until several weeks ago he came to my office, there was some gentleman with him. He told me he was in litigation with the Coca-Cola Company and wanted to get some information from me. I believe there was something said about Dope and Koke. My recollection about it was he was very anxious to get me to come in with him on his case, that I could be of material help to him in upholding his right to the words Koke

(Deposition of Lee Hagan.)

and Dope; it would not affect my business. I did not encourage Mr. Mayfield very much, in fact I would not talk to him. He knew I was selling my syrups as a Koke and Dope drink; that the customers were selling it for that under those names. He left me under the impression that if he were successful he would not interfere with me in selling my beverages under that name. I was in business in 1887; that is my recollection. I do not remember anything about any drink being made around here at that time under the name of Koke, sold in Atlanta under the name of Koke. There was nothing sold as Koke at that time as I ever heard of, or dope. The first time I heard that word Dope was in '99. I first heard the word Koke the last few years. I knew of the words Dope and Koke as applying to this class of beverages long before I ever heard of them.

Q. What do you think of the claim of the defendants herein to the exclusive rights of the terms Dope and Koke?

A. I think it is a lot of foolishness.

Mr. LITTLETON.—We object to the question and answer on the ground it is irrelevant and incompetent and move to strike it out.

Objection overruled and appeal prayed and granted.

I conceive that the Coca-Cola was the original cola drink, koke drink or dope drink, and their advertisements called attention to it.

Deposition of George R. Edmondson, for Defendants.

GEORGE R. EDMONDSON.

Direct Examination. [992]

I am thirty-eight years old; business, druggist; we have two places, one on Broad Street and one on Pryor Street, in Atlanta, Georgia. I have been in the drug business about 17 or 18 years, I think. We have a soda-fountain at our place of business and have had during the time I have been in business. I know Mr. J. C. Mayfield. I first met him, I guess, in '98 or 1900; it has been quite a long time ago. When I first met Mr. Mayfield he was here engaged in the manufacture of a soda-fountain extract. We bought some extract from him; we bought some of it, I guess from time to time for 5 or 8 months before he left Atlanta and he went from Atlanta to Birmingham and we got some after he left Atlanta. We mixed it with syrup; it was an extract that we bought, you understand. We mixed it with simple syrup, a heavy syrup, and then added aerated water to it when we served it at the fountain. It was very similar to Coca-Cola in color; we served it like Coca-Cola in seven-ounce glasses. I do not know whether I had compared it in taste with Coca-Cola, it was a long, long time ago, sir, and I cannot say. The syrup came to us in little kegs, possibly five-gallon kegs. I think they were painted red, that is my recollection. I do not know positively, I think they were. It was called dope or koke, I have forgotten, I do not know which one. There was a label on the

(Deposition of George R. Edmondson.)

kegs, I think, just giving the kind and a formula, tell you how to mix it; telling one gallon of this to ten gallons of syrup, something of that kind. I think the name of the product was also on the label, called either Dope or Koke. It has been so long and I never paid very much attention to it at the time, and, in fact, never thought anything of it.

Cross-examination.

If a man comes into the store and asks for a dope I think he wants a cola. I do not know that I have anybody ask for a Koke, it might be that we do occasionally. I never work at the fountain but I am in the front of the store and hear a lot of people call for Dope. When asking for a Dope I think they want Coca-Cola. When they ask for Koke I guess they want something, there are so few, I never heard but a few [993] ask for a Koke, and Dope; there are quite a few that call for it. I have heard those expressions applied to Coca-Cola, that is, Dope, just as far back as I can remember, I guess. Most of them ask for Coca-Cola, or a Cola but a man may come in and say give me a Dope, or a Dope and line. I have understood always what they meant. I know we got some of that extract from J. C. Mayfield and I know he called it Dope or Koke, I do not remember that it was Celery-Cola on the label. I think my recollection is, I know, he called it something as Dope.

Redirect Examination.

I think at one time we handled possibly a gallon

(Deposition of George R. Edmondson.)

of syrup that Wiley made, with a little receptacle on the fountain that he was trying to advertise, but only for possibly a month or something like that. It did not amount to anything. That was a Cola drink, I had a little gallon or two glass container that you could set on the fountain, you understand. I really have forgotten what he called it, but the people did not ask for it and we discontinued it. We handle Coca-Cola now. Aside from these Cola drinks, I have mentioned, we do not handle any other drinks besides Coca-Cola, there are other drinks, but we have never sold them. I know they are sold in other places, some of them, Afri-Cola, some of that kind, I see it in wagons on the street, bottled stuff, but we do not sell any of that at all. I think years ago, possibly just after I came to Atlanta, we sold a little Wine of Coca, for awhile, possibly. It has been a very long time ago and we have not handled it for years. The reason I say that Dope in my opinion means Coca-Cola is that everybody in Atlanta that drinks that want Coca-Cola because there is nothing else sold here except Coca-Cola. You ask a man the second time and he will say Coca-Cola, ninety-nine out of one hundred times, because they do not know anything else. So far as our particular business is concerned we have never sold anything except that extract.

Deposition of R. J. Baker, for Defendants.

R. J. BAKER.

Direct Examination.

I am 35 years of age; live at 636 Euclid Avenue, Birmingham, Alabama. Lived here about 29 years. I am in the advertising business, show **[994]** business now, but I was not at the time, Mr. Mayfield was here. I knew Mr. Mayfield when he was in Birmingham, that has been now, away back yonder. I never had much dealing with him until 1902, 1903 and 1904 and along there. Mayfield in 1902 when I knew him was bottling Koke over there in his place of business at 2116 Morris Avenue. I knew him in a business way a good many years before and when I went into the laundry business here I happened to get his laundry on my route and I used to have to go to his place of business to collect on Saturdays and I used to drop in there occasionally and he was a very friendly nice fellow, and he kind of liked me and I liked him and I used to stop in there socially and he would give me a drink of this Koke. It was just plain Koke, like any other kind of drink, a soda-water drink. A syrup, just like Coca-Cola, red like it, tasted like it, I always liked it. He put up a lot of different drinks around there but I never paid much attention to how many different ones he had. He had barrels he shipped it away in marked K-o-k-e, with a stencil sometimes and sometimes with a label. The color of the barrels and the kegs was just like any of these other kegs, a dark

(Deposition of R. J. Baker.)

brown-like I presume, I don't remember, in fact I did not know all this was going to come up and I never paid much attention to it to be honest with you, but I remember drinking that Koke, I used to like it, the barrels might have been a dark brown color, but I would not say for sure. To my knowledge he was there for 8 or 10 years, probably more, might have been, but I had dealing with him about three years. I could not say how long before, and he was here long after I left the laundry. The laundry went out of business, and I used to stop in there after that sometimes and he moved away from there, I am talking about J. C. Mayfield.

Cross-examination.

My present business is advertising shows, any of them that come through here, I do the advertising. I am doing the advertising for the Carnival next week, bill-posting and that kind of advertising. Before I went into the advertising business I used to be a street-car conductor **[995]** for years, and I had to quit that, I had to be on the outside, the work there and the rough handling of the cars is not healthy and I was in the laundry business a good deal. I have been in the advertising business since 1907. From 1902, 3 and 4 I was in the laundry business and before that I was with the street-car business. Between 1904 and 1907 I was ticket-taker with the Bijour Theatre. The laundry I worked for was the Avondale Steam Laundry. I could not say the name of Mr. Mayfield's concern here in Birmingham. He was at 15 South 20th Street when I first

(Deposition of R. J. Baker.)

commenced getting his laundry, that was on my route, that was in 1902. He moved to 2116 Morris Avenue, he had his place of business there, he was there for off and on a couple of years I guess. My dealing with Mr. Mayfield and my acquaintance with him at his place of business, was during the years 1902, 3 and 4, and I was driver and would go and get his laundry work, and he would give me a drink occasionally. He made different drinks, it might have been Cherro-Cola, might have been something like that, I don't know what else he had. It was a general bottling business. He probably may have made a drink called Celery-Cola, he had several different ones and might have had it. I saw him filling them up. I believe there were Celery-Cola labels around there. I am not sure about that. The only one I drank was Koke, because I liked that, and it was the only one I noticed particularly. I never noticed or drank the others. The first he gave me I liked and I said, "This is fine, Mr. Mayfield." He said, "Drop in and get one again." It tasted like Coca-Cola and it looked like Coca-Cola. He called it Koke, K-o-k-e, in black letters he had on it on the bottles, the bottles had labels on them, the shape of those labels was just on a square paper and had black letters K-o-k-e. That is, the label was a square label with the letters "K-o-k-e" on it in square letters. That was stuck on the bottles, about the size of Coca-Cola bottles. I never noticed the sizes. I do not know whether the bottles had caps or crowns on them, when he brought them to me they were

(Deposition of R. J. Baker.)

opened. These barrels I never noticed, I know they had different sizes and the express **[996]** men being out there sometimes loading up different kinds, shipping them away but I never paid much attention to them. The word sounded like Coca-Cola, and the drink was a brown drink like Coca-Cola. I have drank Coca-Cola. A good while before this I knew there was such a thing, I had seen the advertising around on signs, bill-boards. Sometimes I have the headache and I might drink some but I could not say about drinking it for pastime I never drank it. I could not say where Mr. Mayfield went from here when he moved away. I do not know where he came from when he came here. My first dealings with Mr. Mayfield and first knowledge of this drink I am testifying about, Koke, was 1902.

Deposition of M. Casey, for Defendants.

M. CASEY.

Direct Examination.

I am 56 years old; live in Birmingham; I have lived here about fifteen years; engaged in railroad contracting. I have been railroading you might say since I grew up, since I was about 15 years old, that is I have not been a contractor all the time but I have been contracting about twenty years. I know J. C. Mayfield, I knew him here in Birmingham. I should judge it has been about 12 years, I think, I knew him before that. At that time he was selling this here bottled stuff he called it Koke down here. I know he was selling that because I came in and

(Deposition of M. Casey.)

ordered it from him; I bought it to sell it for the railroad business, for our commissary. His place of business then was on Morris Avenue. I bought it for a good long while though, I believe I bought it during the time, as long as he was in business down there. I have drank Coco-Cola out of the bottles. I do not remember now the taste of this product as compared with the taste of Coca-Cola. I just bought the stuff from him and sent it out, I bought his Koke from him in them bottles you know and sent it out to the commissary, and Mayfield was selling cider to us too. He was not making any other soft drink, not as I know. This is all we bought from him.

Cross-examination.

When I was buying this stuff from Mr. Mayfield I was building a railroad, I was a contractor. I would buy the stuff and turn it over to my commissary **[997]** clerks to send it out to the commissary. I bought soft drinks. I bought that Koke from him, what they called Koke. I do not remember whether I ever bought Coca-Cola from anybody or not, I just used to come in and buy the stuff, order it and send it out, it just passed through my hands, I paid for it, the bills would come to me and I would pay them. I saw this Koke made by Mr. Mayfield in the bottle. I did not pay much attention to it no way. It had labels on it. I declare I could not say that I know, I don't remember what they had on them. I believe they were diamond shape, if I remember right. This was 8 or 9 years ago, the last time, it is within that time I think. It

(Deposition of M. Casey.)

was 12 years ago since I knew him, if I remember right. I declare I cannot remember the year or the date now, I know I bought it from him about 8 years or sometime before that. That is 1907 or 1908. The shapes of the bottles, why I hardly remember what kind of bottle they were in I did not drink much of it you know. I believe they had a cap. I do not remember the color of them. I was just acquainted with Mr. Mayfield and he was a mighty nice man to do business with and he gave us what we wanted. The men wanted it, you see and we sold it to them. They used to call for Koke. I didn't pay much attention to it, I bought it that way. I don't know what they called it. I understand they had calls for a drink under the name of Koke and the people asked for Koke. Mr. Mayfield did not tell me anything about making Koke. I just used to order it. The men used to come out there and ask for Koke and they would sell them these bottles over the counter. I ran the commissary, you see. I believe Mr. Mayfield made some cider, I do not know whether he made it or not there, but he sold it. I bought cider. I have heard of Celery-Cola, I do not remember who made it. I just knew Mr. Mayfield and dealt with him altogether, it was kind of personal proposition.

Deposition of W. B. Arnold, for Defendants.

W. B. ARNOLD.

Direct Examination.

I am 31 years old; live in Birmingham; lived here about 10 years. I am a hotel clerk at the Suburban

(Deposition of W. B. Arnold.)

Hotel. I knew J. C. Mayfield, first knew him the latter part of 1905 down here on Morris Avenue, Birmingham, Ala. **[998]** He was engaged in the bottling business at the time, manufacturing Koke and different drinks. This Koke was a kind of cola drink. I knew his son and I was in his place of business down there several different times. I went into the place where he was making this stuff; into his factory down on Morris Avenue. I saw the syrup in barrels painted red, there was labels on the barrels, they were labeled Koke, they were blank labels I believe stuck on the end of the barrels. In 1908 and 1909 I ran a soda-fountain in the Hippodrome Skating Rink on Third Avenue. Koke was the only cola drink I dispensed and a general line of soda-waters. I got that Koke from Mayfield, it come to me in *letter* barrels, five-gallon and ten-gallon barrels. They were painted red. Those barrels were labeled Koke. Our customers used Koke in asking for this drink and some called for Dope, when they asked for Koke and Dope I gave them Koke. I have been out to the baseball park here; they sell Dope and Cola Nip out there. People in asking for those drinks ask for dope and are served that bottled goods. When customers come into our soda-fountain and ask for a Koke or a Dope, I do not consider they had made a definite and specific request on me for Coca-Cola. The words Koke and Dope mean as applied to soda-fountain drinks, some cola drink. I do not think they are calling for any particular Cola drink.

(Deposition of W. B. Arnold.)

any particular brand of cola drink. I have had calls for Coca-Cola, at our fountain, when they asked for Coca-Cola I told them I did not have Coca-Cola but I could give them Koke. We had a few little signs around there, I think they were postcard signs, fancy signs with the word Koke on them. "Drink Koke, 5 cents everywhere," I believe.

Cross-examination.

On the sign was "Drink Koke, 5 cents everywhere," that is the best I can remember, the word Koke was spelled K-o-k-e. I really do not remember whether it was printed in block or script, the printed matter on those signs was black, I believe. They were not very large signs, the sign was about 6 inches wide and I suppose a foot long, something like that, to be hung up, a little hanger on the top. I had that soda-fountain out there at the Hippodrome in 1908 and 1909. I had **[999]** calls for Coca-Cola out there and I had calls for Koke and for Dope, and I sold only Koke. Dope is sold out at the ball park, I think it is made by the Birmingham Bottling Company, something like that, here in Birmingham, I think it was a year before last. I had heard of it before that around Birmingham, the Birmingham Bottling Company Product, that was the product that was sold at the ball park. I am not positive whether it was Cola-Nip, Mi-Cola, or what it was. I am positive that this product either Dope or Kola-Nip was sold at the baseball park in either 1912, 13 or 14, one of the years. I know it was Dope,

(Deposition of W. B. Arnold.)

I would not be positive whether it was Cola-Nip or what, there are several, Mi-Cola, and Wise-Ola. It could have been Coca-Cola. I know they called for Dope and Coca-Cola. I know one year they did not sell Coca-Cola, I am not positive what season it was. It might have been Cherro-Cola, one of those three they sold some other drink outside of Coca-Cola. Six or eight months after I came to Birmingham I met Mr. Mayfield, I met Steve his son when I first came. The label with Koke on it was black, I do not remember the shape, it has been so long ago, I do not remember. I seen Koke labels before that time, on Morris Avenue at the factory, I had been there several times, that was 1905, that was the time I saw this Koke label on the barrels, I am not positive whether it was black or not. It was a stencil on the barrels in block letters, some were stenciled and some were a label, square labels, I think, pasted on the end of the barrel, 2 inches wide and 4 inches long, and that had Koke on it. I did not see any bottle labels, I did not handle bottled goods then. I think they were manufacturing several different drinks, then, soda-water, Celery-Cola, I believe, I do not remember any other drinks, I believe Koke. I do not remember about the Celery-Cola labels. I am quite sure I saw Celery-Cola labels. The reason I remember the Koke labels, I handled Koke at the soda-fountain and did not handle any other cola drink. I do not remember about Celery-Cola at Morris Avenue in 1905. He was on Avenue B when I was buying Coca-Cola, I mean buying Koke. I am

(Deposition of W. B. Arnold.)

certain about 1909 that the labels I saw were the Koke labels. **[1000]** I remember the little red barrels, and he put it in little red barrels, the labels were on them. I guess it could be used as a shipping tag, it was stuck on there, that come to me was stuck on there. I did not notice any shipping tag in shipping to me at the Hippodrome. I did not pay any attention then, I was not interested. I remember the sign word Koke was on the barrels at that time but I do not remember whether it was printed on there, labeled on there or a tag. I remember it was Koke and not Celery-Cola. That was the latter part of 1905. I was dispensing soft drinks in 1908 and 1909. The name of Mr. Mayfield's business was I believe, I do not remember positively, Mayfield Bottling Works, or J. C. Mayfield Manufacturing Company. I paid cash. The word Koke was on those barrels that were shipped me at that time in block letters I believe, the best I can remember. I believe it was the same kind of label I had seen back there in 1905, only I don't remember in 1905, not distinctly about 1905. In 1908 they were block labels, stuck on the end of the barrels with Koke on them. I do not remember any other printing on there, there might have been some other wording on there but I remember the word Koke very distinctly. The shape of the label was kind of oblong like a dollar bill. The word Koke was printed on there. I did not care whether they asked for Dope or Koke—this is in 1908—at my soda-fountain, I gave them this product I had gotten

(Deposition of W. B. Arnold.)

from Mr. Mayfield. I do not remember any product here known by the name of Dope. I do not remember this Birmingham Bottling Works, this Dope Company, whether it was doing business at that time or not. I could not tell whether they are doing business now, I guess they are; they are selling a product they label Dope, that has been sold for a number of years. There has not been any interruption in that business so far as I know. I told them I did not have anything but Koke and served Koke when they asked for a Dope or a Koke. I was working for myself at the Hippodrome Skating Rink, third avenue and 21st Street, known as the Orpheum Theatre now. I only stayed in this place those years, 1908 and 9. No one worked for me there, it was only open there in the afternoon and night, no one else **[1001]** was on duty there but myself, I stayed there all the time. I do not remember anything about Coca-Cola, I had heard of it and drank it. I could not say how long before that I had drank it, 2, 3, 5 or 6 years, that would be around 1902 and 3. I had not heard the words Dope and Koke then. I never heard the word Koke until I came to Birmingham. Before I came to Birmingham I was at Macon, Georgia. I had never heard the word Dope around Macon, Georgia, and never heard the word Koke around Macon, Georgia. I lived at Macon about 8 years. I went to Macon at about 13 years of age. I lived before that in Kancock County; between the time I was 13 and 21, I never heard of the term Koke or Dope.

Deposition of B. P. McGraw, for Defendants.

B. P. McGRAW.

Direct Examination.

Sixty-four years of age; live in Gadsden, Alabama. I have lived there 15 years, engaged in the bottling business; have been engaged about 16 years in the bottling business. I am bottling Digestol, strawberry soda, cream, lemon and orange and some ginger-ale and Koke. I have been bottling Koke ever since 1900 off and on. I purchased it as an extract from J. C. Mayfield, right here in Birmingham. I have been bottling it ever since off and on, part of the time it would be very dull, but it was like some three or four or five months maybe I did not bottle so much of it and then again I would find out where he was, and he would write me and I would get some more and bottle it. I have not always gotten it from Birmingham. I got it from Nashville, and I got it from St. Louis, now this I got from Nashville was, I think, in the syrup form, it seems sometimes I would get him to send it to me in concentrated extract form so I could put it up myself and it was a little cheaper to me, and from Nashville, and then from St. Louis, then from Chattanooga. I first put this up in soda pop bottles, what you would call the Hutcheson bottles, that had a spring stopper in it. I was bottling other drinks at that time, 1900 and 1901. I got those bottles from the Chattanooga Glass Works or Glass Works at Tallapoosa. The bottles I put up Koke in were the same kind of bottles I put up lemon and the other

drinks in. That was the only bottle I had to put Koke up in, that is the only kind because we only had a Hutcheson bottle, later on we began using bottles with [1002] crowns on them. All the first were plain crowns before we got any with any name on the top; later we got some with the name Koke on the top. I think that was about 1906 or 7; the decoration that was on the crown was just K-O-K-E, and the top of the crown, you know, sort of looked as if there had been a little silvery tint, a silver color with a little red ring around and then that K-O-K-E in that. The first bottles I put it up in I put labels on so you could tell what it was, tell it from sarsaparilla. I also bottled sarsaparilla. Sarsaparilla and Koke are very near the same color. The first labels I put on Koke bottles were about as wide as my two fingers, and about, I suppose, 3 or 3½ inches long, and it was white, just white paper and the K-o-k-e was just in black ink that was printed on them. At one time I had other Koke labels after which they got something like diamond shaped, white and the black ink, K-o-k-e. I did not use any labels after I began to have crowns on the bottles, because it cost so much it did not pay me to use the labels when I had the crown there that answered in the place of labels, and when it was a plain crown I would have to use them. I went to bottling with just a common plain crown and nothing on them. The first crown that came out we would get that way, then I had to label with that little label on the bottle, put them on so people would know what it was. The Koke extract would come to me in

(Deposition of B. P. McGraw.)

5 and 10 gallon kegs. The syrup would come to me about 28 gallons and up as high as 40 and 42 gallons in a barrel. These barrels were painted red. The barrels were labeled Koke. The label was possibly something like an envelope, it might not be so wide, and that had Koke on it, and then of course it was addressed to the Gadsden Bottling Works with a stencil, you know, or probably tagged. You take a stencil and dip a brush in ink or something, you know, black, and then they put that Gadsden Bottling Works on that and this here was put on the head of the Koke barrel, generally on both heads, with K-o-k-e, in a piece probably as wide as your hand and then that was tagged, something like a shipping tag only a little bit larger. After I bottled this stuff I sold it out to the merchants and retail dealers. [1003] I sold it as Koke. I have another occupation in serving churches and have been for the last 30 years, I am a Missionary Baptist preacher.

Cross-examination.

I commenced selling this thing under the name of Koke to merchants and retailers in 1900 and 1901; the first I heard of this product Koke was in 1900. I have sold it off and on continuously ever since, sometimes it might be 3 or 4 months I did not sell it and maybe 6 months there. By off and on I mean that I had interruptions of 3, 4 or 5 or 6 months at a time. I had those interruptions about every year or two, sometimes I would sort of lose out where Mr. Mayfield was at, you know, as I lost out here, when he first came here I bought it from him. The next I

(Deposition of B. P. McGraw.)

heard from Mr. Mayfield he was in Nashville, then I wrote to him and he wrote to me, then he sent me some in the extract form, one to ten, was the way it was generally fixed in the extract form. I started getting this syrup from St. Louis about 1907, 8 or 9 somewhere along there, I won't be positive, exactly. After that I got it from Chattanooga, the Central Koke Company up there, that was last year. I got it from St. Louis, I think, for about a year along in 1909 or 1910 in there. After that the next came from Chattanooga. We started that last year, using it from Chattanooga. I did not bottle any between the time I bought the syrup from St. Louis and the time I bought it from Chattanooga, I did not bottle any Koke in that interval. I had a couple of barrels the last time I got the extract and at Gadsden you do not sell a great deal of it and one barrel will almost do a year, that is, a barrel of the syrup, and I got 22 gallons of the extract, one to ten, that was the last I got from St. Louis. Now, that would last me, the way I bottle Koke, nearly two years, you know, because I sell mostly digestol, that is the principal thing that I sell, and we sell that with some strawberry, some lemon and the others, such as is commonly known. The first Hutcheson bottle was the old-fashioned pop bottle that you hit the top, and whenever it had labels on it I put that little slip on it, and then later I got the crown bottle and crown machine and crown. At first it was plain, it [1004] was plain, say about 3 or 4 years, nearly that, with the plain crown. I began to use those with the decora-

(Deposition of B. P. McGraw.)

tion on them about 1910, somewhere along there. Mr. Mayfield sent them to me, they had this silvery background and red ring around it, and the word "Koke" in the middle. The word Koke was printed in red in block type. I never had any with the word Koke in script. I am not using any of them now. I used the diamond-shaped label in 1904–5 and 6. Mayfield sent those labels, they were diamond shaped, white with black letters, a white background like with *with* Koke there in black letters, also five cents a bottle. "Drink Koke Five Cents a Bottle," I believe that was on it, that was in black ink. I first got the diamond-shaped labels in 1905 or 6. I do not know who printed them. Mayfield would send them to me every time he would send the stuff, he would ship a great big bundle of labels. I did not have any labels printed, they came from Mayfield, when he sent them. He would send a package of them. That was true of the diamond-shaped labels and the little long labels; all the labels I have used came from the Central Koke Company and J. C. Mayfield. In the last year I bought the crowns because he gave the permission to the Crown Cork and Seal people and these people now print them and sell me the crowns. Before I had to get the crowns from him. In 1900 I sold this Koke to J. W. Stone, one of them, he was in Gadsden, I don't know where he is now; another is J. W. Fowler, he is there in Gadsden—there at Attalla, I think he is there now, also J. R. Brown, he is in Attalla; Willis McMillan, I think Mc for Mc, Mellon, in Attalla; H. J. Vincent, Gadsden, he is there now;

(Deposition of B. P. McGraw.)

J. R. Robinson, Gadsden; J. T. Nugent, Gadsden. Then there are several others that I do not remember, little stands, you know, just like little stands, they would be in six months and off and gone. These sales were in 1900, 1901 and 1902, and along like that. Sometimes I got the extract from Mr. Mayfield and sometimes the syrup. I got at one time a 22 gallon keg of the extract from Nashville. I just write to J. C. Mayfield up there personally. The packages that I got from Nashville had the labels or shipping tag on that I have described and the same way from St. Louis and from Birmingham. The labels that are on the stuff that **[1005]** I got from the Central Koke Company of Chattanooga are about the same thing; just a shipping tag, oblong shipping tag, and it has on it, you know, I think, The Central Koke Company, I think, Koke. The same way with black letters you know. I do not think there is any change in that. There is no label to cover the end of the barrel, there is a tag on the end of the barrel and then my name—The Gadsden Bottling Works, stenciled or put there with ink on the end of the barrel and that is put on there.

Redirect Examination.

I had advertising matter of Koke. I suppose it was 4 inches wide and 8 inches long. I don't rememmer, somewhere, a pasteboard paper like. I hung them up and stuck them up on old stumps and trees and places around wherever I could. Koke was on them, Five Cents a Bottle, Drink Koke, Five Cents a Bottle, that is all I remember of it.

(Deposition of B. P. McGraw.)

Recross-examination.

Mayfield sent them to me. He sent them to me in 1901 and 2, sometimes when I would come down here I would get a great big package of them in 1901 and 2.

Redirect Examination.

I got them at other times besides 1901 and 2. He sent me some every time he shipped me syrup, he would send me a whole lot of the stuff and them little labels, sometimes I put them up and sometimes I didn't, the boys would tear them down so bad.

Recross-examination.

I will draw you the shape of that label, and that advertising matter on the label, that was sent to me to be distributed, and I went around and put it in different places. I would put it, sometimes it stayed up there a day, and maybe not more than 2 or 3 days before the boys would tear it down, like all the other advertising, that was in 1901 and 2 and I have received it off and on ever since from that time.

Mr. HIRSCH.—I tender in evidence this exhibit to the testimony of Mr. McGraw. [1006]

Deposition of Oliver Prince, for Defendants.

OLIVER PRINCE.

Direct Examination.

I am 27 years old; live at Rising Stave, Birmingham. I have been here practically all my life. I worked for J. C. Mayfield about 1903 and 4, washing bottles, painting kegs, sometimes, because part of the time I was not washing bottles. That was at South 20th Street, in Birmingham. I painted the kegs red.

(Deposition of Oliver Prince.)

I put in them some kind of liquid form, a syrup, Dope or Koke, or whatever you call it. We had small bottles about the size—I could not say the height, the ordinary size, just about the same as the soda-water bottles I have seen around town. I have worked for Mr. C. C. Baxter. I have worked for Lee and Cruelhause, that is a saloon. They handle soft drinks in that saloon. Lee & Cruelhause handle Coca-Cola. That was the only cola drink they handled when I was working there. This other place handled Dope, I believe, Mr. Baxter did, from the south side somewhere, Woochester's. I was about the place when people came in and asked for drinks, what they wanted. When they asked for Dope I gave Dope and when they came in and asked for Coca-Cola I told them I did not have it. This Dope and Coca-Cola are about the same color and all except the taste. It did not taste alike to me, I don't know how they do to other people, they have a little different taste.

Cross-examination.

I opened up the place with C. C. Baxter when the saloons first came back to Birmingham four years ago, I think. I worked for Lee & Cruelhause up until about 3 months ago, about 8 months ago. I am in a barber shop now, The New Harris Barber Shop, located 19th Street and Second Avenue, at the Florence Hotel. I am the porter. This Dope I am talking about I do not know whether they call it Dope or not, Mr. Roocester, I think makes it, I guess he makes it now, he don't label that with a label. I don't know the name of it, whether it is Dope or Cola,

(Deposition of Oliver Prince.)

except I come in and ask for a Dope or Koke or Coca-Cola, if I ask for Coca-Cola I get Coca-Cola. While I was at Lee & Cruelhause that was all they had. If a man came in and asked for a Dope or Koke I would tell them I have got Coca-Cola, I have not got Dope. At the other places when they asked for Koke or Dope, anything that I had, except when he called for a Dope or [1007] Koke made on the south side, I gave them that, that is this Woocester stuff, I think that is the name, I am not positive. I do not know whether it is on the market now or not. I have not handled it in about 2 years now, since I left Mr. Baxter. I washed bottles in 1902 and 3 and 4, for Mr. Mayfield, I think it was then. I do not know the name of his establishment, all I know is about his son. I don't know J. C. Mayfield. I would not know him if I saw him to-day. That place was on 20th Street, on this side, between Powell and Marsh, or Powell and A, somewhere. I was cleaning bottles for—the bottles would be dirty when they came back and we would have to wash them out. About the same sort of bottles as Coca-Cola bottles. I did not see any Coca-Cola bottles down there. I might have washed Coca-Cola bottles, I did not pay it enough attention. I never read the labels particularly. I never put it in the bottles in my life, I said they put it in there. I do not know what it was. They called it, I believe it was K-o-k-e, that is the name on the labels, on the kegs and the bottles. I said I did not see any labels on the empty bottles when they came in, the labels were round, it was a white label with

(Deposition of Oliver Prince.)

blue letters, and were put on the ends of the kegs. That is the best of my recollection. They put those on the barrels I painted red. There were labels on the bottles, also, the same as there was on the kegs, only they were oblong. Koke was on them in blue printed letters, block or square. I say, you got me, around here on everything, all about that, possibly. I did not know what they wanted. To the best of my recollection I remember I worked for Mr. Mayfield at that time. I remember that stuff was famous and everybody hollering for it, hollering for Koke. It was such a peculiar name, Koke, Kokoa, or something like that.

Deposition of Charles W. Burton, for Defendants.

CHARLES W. BURTON.

Direct Examination.

Forty-seven years of age; live in Birmingham; I have lived here two different times, I lived here the first time from '98 to 1908. The second time I came here the 1st of October, this past October was three years ago. I am now in the eating business, lunch business. In the [1008] past I have been in the saloon business, I have been in the saloon business all my life, I am sorry to say. I handled various kinds of soft drinks at my bar. I have handled at different places Coca-Cola, Rye-Ola, Cherro-Cola, Dope, Koke, and various others that I may have forgotten. I have known of these cola drinks, to the best of my knowledge, not stating exactly accurate, because I cannot say that, I should say 10 or 12 years. I was

(Deposition of Charles W. Burton.)

about the bar myself quite often so that I could hear the requests our customers made in asking for these soft drinks. Indicating the drinks they wanted people would use different expressions, somebody would ask for a Coca-Cola, some would ask for Dope and some would ask for Koke, and some would ask for Rye-Ola, Cherro-Cola,—naturally one man would ask for one thing, one brand and another another, the same way as some men would ask for booze and want whiskey. When they come in and asked for Dope I give them Dope if we had it. The Dope I speak of is the preparation that Lon Campbell puts out, the Birmingham Bottling Company put out a preparation and call it Dope. I don't know what it is. To the best of my knowledge, of course, I might be wrong on this, not being interested in it, to the best of my knowledge I served it in 1906 and 7, before we went out of business, January, 1908. At that time Mr. Houppert and Mr. Campbell were running the Birmingham Bottling Company and they put up this as one of their syrups and one of their commodities as merchandise, the same as ginger ale and the same as soda waters and called it Dope, and if my memory is right, while I was living in Memphis I remember seeing an account in the paper where they incorporated under the name of the National Dope Company. When they asked for Koke we give them this product we bought from Mr. Mayfield at one time, in fact we pushed that as much as we could on Mr. Mayfield's account. I don't know the old gentleman's name, I do not know his initials. I know Steve May-

(Deposition of Charles W. Burton.)

field and two or three of his boys, but I do not know his initials. He was in business then on Morris Avenue, between 21st and 22d, here in Birmingham. I have been to his place of business frequently. I have seen him put up his syrup; seen him have little kegs sitting [1009] around there, little red kegs painted with the name Koke on them, K-o-k-e, just sitting around his place, different sizes, but whether they were empty or full or what was in them, I do not know, I just remember seeing those packages in there. These different cola drinks I have seen in both amber and colored bottles. I do not remember at the time we were handling these particular drinks whether it come in one or the other, or whether it come in both, I cannot say. The bottles of these different cola drinks have a similarity, all about the same size, round, and I have seen them, as I say, in both clear and amber bottles, just one way and then another, in fact. I have seen mixed cases of bottles, the bottles being mixed in the case. I would not consider when a customer came in to my bar and asked for a Dope or a Koke, that he was making a specific and definite request on me for Coca-Cola. The only thing I bought from Mr. Mayfield, to the best of my remembrance, outside of this preparation called Koke, was he used to carbonate my water and put it in bottles. Carbonate the water and supplies. I used to save my empty Apolinaris Splits and White Rock Splits, and when I had saved up four or five hundred at a time, he would bottle them and put in the plain carbonated water in the bottles, and that

(Deposition of Charles W. Burton.)

enabled us every time a man asked for a high-ball at the bar, we could give him an individual bottle of plain water. I bought that from him and this Koke, that is all my memory serves me.

Cross-examination.

When a person asked for Dope and I was handling Al Campbell's product I did not understand that meant Dope entirely, and nothing else. I have heard people ask for Dope and you would set that out and they would ask for Coca-Cola. The man behind the bar is supposed to give a gentleman just what he asks for. I have heard the public ask for Dope and set it out and they would say: "I want Coca-Cola." That is since I have been out of the saloon business for a year and a half, between the intermission of 1908 and 11, I was in the soda-water business in a retail way, before I discovered this, that they would come in and ask for a Dope and they meant Coca-Cola. I come here in 1898. I handle these drinks [1010] Coca-Cola, Rye-Ola, Cherro-Cola, Dope and Koke ever since I have been here. When I first came here I went into the saloon business, I could not say, I would not like to say positively that we handled Dope at that time, or handled any one name, but we handled different things of that kind, but what the names were I am not absolutely positive of. The word Dope was not used at that time that I remember of. I first commenced hearing the word Dope about 1906 or 7. Houppert & Campbell were putting it up, the style of the firm was Birmingham Bottling Company. I was using their goods in 1898, but I do not

(Deposition of Charles W. Burton.)
know whether they were putting out a drink of that kind at that time or not, but I know they were, at least I firmly believe they were, in '6 and '7. That is the first I remember of it. I might have heard of it before that but don't remember. I first commenced handling this product Koke of Mr. Mayfield's, if my memory serves me correctly, from 1907 to about a year before I went out of business. I do not believe I had ever heard the word Koke before that time. I have no recollection of hearing it until I bought it from Mr. Mayfield. I handled other drinks before I handled this Dope of Al Campbell's and Koke from Mr. Mayfield. I think we have always handled something of that kind, but just what the names were I could not say. I have handled Coca-Cola at different times but I don't think prior to the time of these two different drinks. I have not handled Rye-Ola since 1911. I am not quite positive about Cherro-Cola, whether I ever handled that or not. I might have done that in Memphis where I was in the soda-water business. I moved back in 1909 or 10. I do not know where that was bought from. I do not know whether this Al Campbell's product is still on the market, I presume it is. After I commenced handling Dope of Al Campbell's and Koke from Mr. Mayfield, when a person came into my place of business and asked for a Dope, I gave him Al Campbell's product and if he asked for Koke I gave him Mr. Mayfield's product. I understood those to be names which apply exclusively to those two products, that is my impression, the same as if a

(Deposition of Charles W. Burton.)

man asked for any particular brand of anything, why, naturally, like a Stetson [1011] hat, I would give it to him, I supposed that was what he wanted. I do not remember anybody ever asking for Koke and saying they wanted Coca-Cola like I testified about Dope, but I presume possibly there might have been.

Deposition of G. W. Freeman, for Defendants.

G. W. FREEMAN.

Direct Examination.

I am 56 years old, live in Birmingham; lived here 23 years. I am engaged in the whiskey business. My place of business is the Forrest Club. I am president of that club. I know J. C. Mayfield pretty well, that was 1903, 2, 3 and 4, right along there, I would not be positive which it was. I knew him on the south side, Twentieth Street. My place of business was on the south side on 20th Street, right by the A. B. & A. Depot. My place of business was just across the street from him, my place of business at that time was a saloon, a negro saloon, a white saloon, and a pool-room. Mr. Mayfield was making at that time what they called Koke. I handled a good deal of it. That was bottled goods. I had occasion to go across to his place of business a good deal, I was over there frequently. I saw his son Steve Mayfield over there. My recollection is I saw some barrels and kegs over there, it seems to me they were painted red, I would not be positive about that but that is my recollection.

Cross-examination.

I called this product Koke.

Deposition of W. F. Neal, for Defendants.

W. F. NEAL.

Direct Examination.

I am 60 years old, I live here in Birmingham now, lived here about 17 years. Business, railroad building, contractor, been engaged in that business all my life since I left school. I have known J. C. Mayfield ever since I first come here, I think it was about 1901 the first time, about 15 years, I think. I happened to become acquainted with him by buying cider and Koke. I bought Koke and soda-water and the different soda-waters and soft drinks and cider, and near-beer from him. That near-beer was a hop ale. He was doing business when I first knew him on the corner of 20th Avenue and A, I believe it was, in Birmingham here, right across the railroad. I bought Koke from here until he left here. I think he left about 1908 or 9. I bought Koke for the commissary on our construction [1012] camp. These Koke bottles were labeled just Koke.

Cross-examination.

My commissary was located on different railroads around Birmingham here. I was on the Ensley Southern, and then we were on the road from Tusdaloosa up to Surle, and then I went there to Nashville on the Tennessee Central, that was up in Tennessee. From the Tennessee Central I come back to Birmingham on the Southern, from Cane Creek down the river to the Bessemer Coal Mines building a road down there off the southeast branch, off at

(Deposition of W. F. Neal.)

Boothtown, and from there, from Boothtown I went to Vidalia, Georgia, for the Frisco and from Vidalia to Dublin, and from Dublin—I think I forget now what the next line was, all the rest of the lines except the Vidalia, Dublin and Nashville were in and around Birmingham here. When I was at Vidalia, Dublin and Nashville, I was still getting this product Koke at our commissaries. I would order it in from the different places. I am still a railroad contractor but I am not doing nothing right now; railroad contractors are doing nothing just now. That product Koke was labeled just a plain label, spelled Koke, K-o-k-e. They were just black letters in block type. That Koke was on a label on the bottle; I do not remember what kind of label; I think it was just like the labels they put on all the different bottles; the different flavors; a round label, I think it was a round label with what I have described on it. I met Steve Mayfield and went down there with Steve to the plant. He said he had stuff there selling to the railroad contractors and wanted me to go down and see it. I went down there and examined it and I told him he might send me out a half dozen cases of different flavors. I was buying his entire line of soft drinks and six barrels of cider, I think. I bought Vanilla and Sarsaparilla and such as that. I bought Celery-Cola. This Koke was a different produce from Celery-Cola, there was some little difference, some darkies liked one thing and some liked another, so we had to keep the two. I did not see it

after it went to the commissary. I know it was sold in bottles. I just did the buying, paying and ordering. [1013]

Deposition of A. S. Joseph, for Defendants.

A. S. JOSEPH.

Direct Examination.

Age, 54 years; live Birmingham; lived here about 20 years. I first knew Mr. Mayfield in 1900 at Birmingham. He was manufacturing soft drinks and shipping hop ale then. I was in the brewery business at that time. Mr. Mayfield got his hop ale from the Alabama Brewing Company; that was the concern I was connected with. I had occasion to go to Mr. Mayfield's place of business frequently; that place of business was first on 20th Street and Powell Avenue and later on Morris Avenue. That place on 20th Street I always figured half-way between the city proper and the brewery. Owing to the large amount of business we had with Mr. Mayfield in the delivery of what was known as car lots, consisting of one hundred packages of hop ale, delivering it and later collecting on it, which brought me to his place of business sometimes twice a day for a week, and probably the following week I would not be there quite so often. I remember he was manufacturing Celery-Cola and Koke. This Koke was a soft drink; it was about the color of all the soft drinks. It seems to me the appearance was about on a par with Coca-Cola and those cola preparations. I do

(Deposition of A. S. Joseph.)

not remember what it tasted like, I don't play the game. I noticed a good many receptacles sitting around in his place of business when I was in there. His packages were painted red, on the barrels or kegs some had Koke and some had Celery-Cola. On the kegs was labeled with *a* plain black letters, block square type. The color of the label was black, the background white. A white background and black box letters. He also put up a stuff in bottles. I saw a great many of these packages commonly used by the manufacturers of soft drinks, containing so many bottles. He had quart bottles in there of ginger ale. There was a label on the Koke bottles; it was similar to the one on the box and on the keg, not quite so large; it was a white background and black block letters. Mr. Mayfield continued manufacturing and selling that product Koke during the time that I knew him, from 1900 until 1907 when the brewery was put out of commission. I am now operating the Woodward Bar, engaged in that business three and a half years. During the time I have [1014] been at that bar I have dispensed all the different colas, too numerous for me to remember the different names; some of them are Cherro-Cola, Coca-Cola, Nifti-Cola, Gay-Ola and others. I do not know how many of these cola drinks are on the market here in Birmingham; possibly 8 or 10. During my connection with the brewery I was in and out of the bars constantly and I saw these various brands of cola drinks. These other brands of cola

(Deposition of A. S. Joseph.)

drinks were about the same in color with this Koke that Mayfield was putting out. I could not vouch for the taste, I cannot say that I ever saw a cola drink that was not that general color. In asking for these different cola drinks some customers specify what they want and others do not. I hear the word Dope used very frequently. When they ask for a dope I give them the first thing I put my hand on in the soft drink line; I am about the bar myself six to eight hours a day. I rarely ever do any serving but I know what is going on. I hear the customers ask for drinks they want. When a customer comes in and asks for a dope, I do not consider that he had made a specific and definite request on me for Coca-Cola. The general impression is that all these soft drinks along that line, whether designated by one name or the other, is all on the dope order, Koke order; some call it Dope and some call it Koke. Dope means to me ordinarily a narcotic. I have an idea why they call these drinks Dope. I think the advertising that the public has got out of the newspapers at various times when these suits were brought kind of educated them along the lines of what they contain, or at least give them the impression that all these dope drinks contained some kind of dope or coke on the order of a narcotic, and they would come in and say, give me a Dope or a Koke, under the impression that they are going to get some percentage of narcotic.

Cross-examination.

Those suits I refer to, the last one I recollect was

(Deposition of A. S. Joseph.)

at Chattanooga. I think it was Coca-Cola. It was not alone confined to suits; it has been exploited in the newspapers from time to time in regard to these [1015] cola drinks. At times there are different brands mentioned and at other times it was just, I don't—a general impression that it was enough to convey that feature. The last of any consequence was in the Alabama Legislature a short time ago. I do not know whether they singled out Coca-Cola or all the cola drinks. I got my first impression on general principles; the ordinary discussion based on these soft drinks. The general discussion among the consumers of these colas is that all cola drinks contain some percentage of narcotic. I do not mean to confine it to a suit discussed in the papers. I intended that together with the other. It has been created in the mind of these people that it is the game to play, that there is a slight percentage of narcotic in these drinks, and they cannot go up against morphine or cocaine, so they play the other. That impression arose not necessarily from a discussion in the newspapers but it started somewhere. I cannot say any particular drink, but the impression has been created and still exists that all cola beverages contain a percentage of narcotic. Some drinks are more powerful than others. I never was particularly interested in this particular question or kind of business, soft drink business, but I do read the newspapers. I cannot tell what newspaper I have seen these discussions in. To be frank with you I did not come up here prepared to give any

(Deposition of A. S. Joseph.)

definite information as I did not have the remotest idea I had to answer—go thru all this program; if I had taxed my memory before coming up here, I had been given some kind of a tip as to what to get next to I probably would. When a man comes into my place of business and asks for a Dope or a Koke I give any soft drink; it does not make any difference, just the one I put my hand on. I do not consider Dope and Koke names for lemon soda, strawberry soda or anything; that is soda water, and they have an entirely different purpose. That comes under a head of entirely different beverage from sarsaparilla and lemon soda. What we give them when they ask for Dope or Koke depends upon what brand of goods we handle; we might have three or four different brands, such as Cherro-Cola, Coca-Cola, Nifti-Cola. I don't know what [1016] is contained in these drinks; I do not believe there is any formula alike. I would not say what is the narcotic in the Cocoa Bean or Cola Bean. That impression arose with regard to the impression about Koke, K-o-k-e; that it had this narcotic in it because when they speak of morphine or cocaine, they designate it as Koke. Koke would designate cocaine or morphine and the impression is that Koke has cocaine or morphine in it or something else. I do not know which one of these drinks first was on the market. My attention was never called specially to any; I remember seeing drinks in these different places. I knew of them before 1900. I cannot remember the different brands; I knew of Coca-Cola

(Deposition of A. S. Joseph.)

before 1900; I guess several years. I think I heard the expression Dope and Koke used then. These barrels and bottles I saw down there, it strikes me the label on the Celery-Cola barrels were a diamond-shaped label. You see I have got to draw on my recollection. My impression is the label on the barrel was a large label, that is the Celery-Cola, the label was round. I cannot say what type it was in. The label on the bottles seemed to be diamond shape. I was not interested sufficient to pay very much attention to the type; it is something different, the kinds of letters on the labels. I do not remember the color of the labels at all. The Koke labels on the barrels was very easy to remember; that was a label with a white background and black letters. The shape of the labels were mostly square, that is the barrel label; I do not remember the size, mostly square; it was longer than it was wide, about as large as that envelope there. He might have had larger ones on the larger kegs, it was the size of an ordinary envelope. The same label was on the bottles. I was not sufficiently interested to state the size; I remember the label, that is all. I have been handling Cherro-Cola at this Woodward Bar off and on; I handle Coca-Cola and all the different kinds from time to time. I do not know whether we ever handled Cherro-Cola. We have been handling Nifti-Cola the last 30 days. At one time we handled Coca-Cola and some other cola, together, but principally Coca-Cola. I have handled Coca-Cola by itself. When a person asked for Dope or Koke

(Deposition of A. S. Joseph.)

[1017] I gave them Coca-Cola. I have run a fountain at the Terminal Station. I had the different concessions down there; that was barreled Coca-Cola there. I had a place at five points. I handled barreled Coca-Cola there. When a person asked for a Dope or a Koke I gave Coca-Cola, but there was also a bottled Coca-Cola handled at the Terminal Station. I don't think we handled any bottled Coca-Cola there at the fountain. I gave Coca-Cola at these two fountains when they asked for Dope or Koke. That was about four years ago. This hop ale that Mr. Mayfield got out, I said it was not beer. It was not a substitute for beer, in name, you could not call it beer, and the class of people that were handling it, hop ale, did not pay any license. Mr. Mayfield was selling that product but he had a license. I do not know whether Mr. Mayfield was selling that to people that did not have license. I will say one thing, I think they had license, government license. I referred to the local license. That was from 1900 to 1907. Hop ale was a brand the brewery got out, a plain and public brand.

Deposition of Mrs. M. L. Edwards, for Defendants.

Mrs. M. L. EDWARDS.

Direct Examination.

Age, forty-four. I live near Irondale, seven miles from Birmingham, Alabama. I knew J. C. Mayfield. The first bottle of Koke—any co—anything that I sold, you know, I bought it from him in 1903, in East Thomas. At that time he was here in Bir-

(Deposition of Mrs. M. L. Edwards.)

mingham. I had a little grocery store with drinks and fruits at that time, at East Thomas, about three miles from Birmingham. Mr. Mayfield's place of business was on Morris Avenue between Twentieth and Twenty-first at that time and then he moved down between Twenty-first and Twenty-second Streets. His Koke was a drink, a bottled drink. Besides this Koke I handled all kinds of soda waters, plain soda water, and I handled Cherro-Cola, I mean Celery-Cola that I bought from him and I handled Coca-Cola, bought from the Coca-Cola Company. This Koke was in a little, slim bottle, you know, they call them splits bottles, some of them were white and some green and some darker. Those bottles had a little label about as wide as—I don't reckon it was hardly as wide as my two fingers, a little label, a [1018] white label with black letters, K-o-k-e on them. I went down to Mr. Mayfield's place of business a number of times. They had lots of little red kegs around there with the same labels on them kegs. Same as Koke labels. The labels on the kegs were larger. I had lots of customers that preferred Koke. They would come and call for the Koke. Of course, they would see it, I had three shelves, I had Coca-Cola on one, Koke on one and Cherro-Cola—not Cherro-Cola, but Celery-Cola, on one, and then at the ends I had my soda waters. I had some little signs up there. They were square, I suppose, and they were hung in diamond shape; it hung on the corner and they would hang them up on one corner and then the word

(Deposition of Mrs. M. L. Edwards.)

right in the center from one corner to the other and it would say: "Drink Koke, 5 Cents Everywhere." They would hang them on the corner and that made them look diamond shaped but I suppose they were square.

Cross-examination.

I started to say cold drinks, but they were not cold until I put them on ice. That was the reason I hesitated. I think S. T. Mayfield furnished me with these little square signs that hung in a diamond shape. He was the one that advertised them; he brought them out and hung them up and sometimes the wagon men, the men that drove the wagon, would bring them out. I got them from Mr. Mayfield and that was back in 1903 up until 1907. I went out of business then and have not been in business since then. The very first drink I bought at this little grocery store was Koke. I originated that business of mine out there. We never had anything to drink; I went in business and the first wagon that came along I bought off them. I bought Celery-Cola about the same time. I bought Celery-Cola and Koke the same day. I never had heard of them before. I was a stranger in Birmingham. I lived before in Columbus, Georgia. I have heard of Coca-Cola all my life it seems to me. I had not heard of Koke down at Columbus. I had not been in business there.

Deposition of R. W. Lochrie, for Defendants.

R. W. LOCHRIE.

Direct Examination.

Age, thirty-three. Live 726 Tuscaloosa Avenue, Birmingham, Alabama. Lived here nine years. I tend bar at the Woodward. I have been tending [1019] bar there three and a half years,—rather I dispense soft drinks there, and cola drinks also. We are handling at present Nifti-Cola. Before we began handling Nifti-Cola we handled Cola-Nip and Coca-Cola. There is a label on this Nifti-Cola bottle but I am not positive, I think it is blown in the bottle, and there is a label on there, a diamond-shaped label, Nifti-Cola. It is a little yellow diamond-shaped label on the side of the bottle. I do not know the color of the words Nifti-Cola on there. I do not know whether they are red or yellow, the label is yellow but I think, I am certain, and I think the writing is red. I tend bar myself. Some customers call for a Cola, what they want, others call for a Dope; they come in and say give me a bottle of Dope. When they come in and say give me a bottle of Dope I give them what I handle; I give them Nifti-Cola. If a man ordered a bottle of Dope I would give him anything I had that come under that head, in that line of drink. When I was handling Coca-Cola and Cola-Nip when a customer came in and asked for a Dope, I gave him the first one I got hold of unless he specified a certain one. When a customer comes in and asks for a Dope I do not con-

(Deposition of R. W. Lochrie.)

sider he has made a definite and specific demand on me for Coca-Cola. I would take the word Dope myself to mean a drink that would come under the head of Cola drink, soft drinks in that line, Coca-Cola, Nifti-Cola, Kola-Nip, Cherro-Cola, anything, that is my own idea on that. I have known of these Cola drinks ten years, maybe longer, I guess longer than that I have knowed, of course, of this Nifti-Cola and Kola-Nip, I have information of only since I have been in Birmingham; I have heard of Coca-Cola all thru the country, at different places I have been. These different Cola drinks are practically all the same color, that is there might be a shade difference in some of them but then I expect they are practically the same. There is a difference in the taste of most all of them. I believe a good deal, that is, I might not name it, but I could tell one drink from the other, it is different. I never had a customer reject any of the Cola drinks I have dispensed when he asked for a Dope on the ground that it was not what he asked for but I have when he asked for certain drinks and I told him the difference. I have had them come in [1020] and ask for certain drinks and told them that I did not have that drink, but tell them the drink I have and I have had them refuse to take that one. When I set a bottle of Nifti-Cola up on the counter for a customer he ought to be able to tell it is not Coca-Cola. I could tell by the label and I could tell by the taste.

Q. What do your customers think they are getting when they are served with this Nifti-Cola?

(Deposition of R. W. Lochrie.)

Mr. HIRSCH.—I object to the foregoing question because the witness does not know what a customer thinks, he is not a mind-reader.

Objection overruled and appeal prayed and granted.

A. I could not tell. I don't really know what they do think, at least they are satisfied, I do not suppose they would take it.

Q. Do they think they are getting a Rye-Ola when they are getting this Nifti-Cola?

Mr. HIRSCH.—We object to what the customer thinks, he cannot possibly know, and I move to strike out the question and answer.

Objection overruled and appeal prayed and granted.

Q. When you serve Coca-Cola do your customers know what they are getting?

Mr. HIRSCH.—I object on the same ground.

Objection overruled and appeal prayed and granted.

A. I do not know as they could unless they absolutely knowed the taste of Coca-Cola, but I suppose if you wanted Coca-Cola and asked for Coca-Cola you would know what it was when you drank it.

Cross-examination.

If they ask for a certain drink, Coca-Cola or Nifti-Cola and I put a bottle out there in the regular course of business, and pulled off the crown, in the appearance of the bottle they could tell the difference. As a general rule the trade I have experience with don't examine the bottle. I have knowed them

(Deposition of R. W. Lochrie.)

to examine it to my observation. The crown is taken off and thrown under the bar before the drink is served. The labels do not generally come off in the ice-box. At our place we don't put them in an ice-box. They are in a chilled box; in other words we set it up with a glass and ice and the customer pours out his own drink. [1021] Nifti-Cola has a label but I am not positive whether it is on the bottle. I think that is compulsory. I don't know, I think I have heard about it. In my opinion they could tell the difference; I mean without the paper label. If the paper label was not on there a purchaser might possibly tell the difference in the taste. In appearance, just to look at it. If I could not I do not believe he could. Those labels come off very easily if they are wet. Just like a label on any bottle. There is a drink called Dope, if I remember right, but I never handled it. I thing there is a drink here now handled by certain concerns, called Dope. but if I was not working where that was and a man came in and asked for a Dope, and I was very busy and he did not specify what he wanted I would grab the first thing in a drink, Cola drink, Coca-Cola, Cola-Nip, anything I had in that line and would serve it to him and if he objected I would know what to do. I never heard the word Dope used, to give it a thought or anything, until I went to serving such drinks as these. Previous to this I was not in that line of business for I was in the dining-car service, where they do not handle any such drinks. I do not know as I have ever heard of the

(Deposition of R. W. Lochrie.)

word Dope used before I commenced handling these other drinks. I may have heard it but not giving it a thought, not working with it. The experience I am testifying about is altogether in my four and a half years.

Deposition of H. O. Adams, for Defendants.

H. O. ADAMS.

Direct Examination.

I am forty-seven. I live at Adamsville, Alabama. I never lived in Birmingham. I know J. C. Mayfield. I knowed him in 1903. I knowed him when he was in business down here on Twentieth Street right close to the L. & N. Depot. That was in Birmingham. He was engaged in the bottling business there. He was bottling a drink they called Koke and Celery-Cola and other kinds of drinks like soda-water drinks. I was engaged in the retail business at Littleton, Alabama, selling groceries, fruits, meats, and drinks. I bought some of Mr. Mayfield's products. I bought Celery-Cola and the drink—the Koke. I bought it for about three—two or three years—three years. That was bottled goods I got. It come in a little six ounce splits bottle we called them. A label was **[1022]** on the bottle to indicate what was in it. It said Koke and Celery-Cola. There was a label on the bottle, and spelled Koke on it, great big black letters. Celery-Cola had a label on it, too. This Koke label on the Koke bottle just letters spelled Koke on it. Printing. I called them block letters. The Celery-Cola

(Deposition of H. O. Adams.)

had an inscription around it, and spelled Celery-Cola across it. They did not look alike. It was more like writing. Customers would come in and call for whatever they wanted, a Koke, Celery-Cola, Strawberry, anything like that. They never asked for Koke by any other names than Koke. Not often; very seldom.

Cross-examination.

This Koke would come 18 dozen in what we called a sugar barrel, I believe sixteen to eighteen dozen. They would run probably six or eight dozen of Koke and six or eight dozen of them Celery-Cola, you know mixed in the barrel and through the summer-time we would probably sell a barrel a week, but in the winter-time I would not sell a barrel a month. I do not still handle that product. I am still in business. I have handled different products, something like those, Wise-Ola and drinks made out here by the Pioneer Bottling Works, the same kind of stuff. They don't make nothing but Coca-Lulu, and then for the last—that was when I was at Littleton, I sold that stuff. Now I am at Adamsonville in the retail business there. We used to handle Rye-Ola, Wise-Ola, and some other kinds of drinks, and after that I went into the bottling business, in 1907 to bottling. I was bottling up to the first of January. I shut down. There was no money in it then. We bottled what you call Queen-Ola and Wise-Ola. I got for Queen-Ola and Wise-Ola 60¢ a case and that is what I had to pay for it when I had to buy it from other people. Dope is a drink it applies to all those. If they or-

(Deposition of H. O. Adams.)

dered Koke from me what would I give them? I would tell them I did not have Koke, I had so and so. I have labels on the different kinds. Koke refers to that, a special label for that, a special name. When a person asked for a Koke and I did not have that special name I explained I had so and so, and if he wanted it I give it to him and if he didn't I didn't give it to him. Dope applies to all these kinds of drinks. Koke applies to the one drink only. [1023] When I have had calls for Koke, since I stopped handling that product, I did not give any of these other drinks, Wise-Ola or Rye-Ola. I never have handled any Coca-Cola. Oh, a long time ago, about twenty years ago I probably handled a few cases. They called that Dope then, yes, sir.

Deposition of H. L. Fisher, for Defendants.

H. L. FISHER.

Direct Examination.

Age, thirty-eight. Engaged in wholesale liquor business in Birmingham. Lived here four years and a half about. My business takes me around the bars, no other place else. I frequently hear the names people use in asking for drinks around the bar. That is part of my business, buying drinks, that is all of it now, I am not able to sell any whiskey. The bars handle all these drinks, sold here in the market. Rye-Ola, Coca-Cola, Ali-Cola and this Dope and I do not know, there seems to be eight or ten of them. I have known of these Cola drinks, it seems to like always, but oh, well, I can't remember

(Deposition of H. L. Fisher.)

when there wasn't any. The people indicate to the bar-tenders the drinks they want by asking for what they want. They call for Wise-Ola, Ali-Cola—When they ask for Dope they get I suppose Dope, most saloons handle it. I understand it is made by Smyly. Smyly is doing business under I believe Birmingham Bottling Company, I am not positive about that. I have heard people ask for a Dope and be served with Rye-Ola or these other drinks. I never heard anybody refuse those drinks as not what he asked for when he asked for it as Dope. These Cola drinks are all labeled, most of them have the name on the cap. I see occasionally some of them do not have the name on the cap but they are all labeled. I sometimes go in and ask for those drinks myself. I go in and say give me a bottle of Dope, and I get anything that he gives me, I am not expecting any certain thing, most of them, I know that have this Dope a great many of the saloons don't handle Coca-Cola and if I know that this special saloon handles this Dope I make it specific, I want Dope and some handle Coca-Cola and I ask for Coca-Cola. I do not drink very much of that stuff but when I do I usually know which one of these things the man handles and ask for the one I want. I sometimes go in and ask for those drinks at soda-fountains. I ask for Coca-Cola. I never drink anything else but that at soda-fountains, but Coca-Cola. I never ask for Dope because I [1024] want Cola-Cola. From my experience, my hearing people ask for these different drinks and

(Deposition of H. L. Fisher.)

what appears from observing the custom of the bars here in Birmingham I do not consider that when a customer comes in and asks for a Dope that he has made a definite and specific request for Coca-Cola because there is so many of those drinks that a man will go in and ask for a Dope and take any one of them that is handed to him.

Cross-examination.

I could not tell you which one of these drinks I did know of first. I do not remember. I do not remember Coca-Cola before I did any of the rest of them. I remember them all just as long as I can remember. Up in my home where I was raised in Paducah, Kentucky there was several bottling plants there and they all bottled these different drinks. I could not state specifically at all how long I have known of Coca-Cola because I never paid any attention to it except say probably from six to eight or ten years, or twelve years. I won't even approximate how long I have known them. All these drinks are labeled, they have the label on the crown, most of them do, and they label them, have a label pasted on the bottle. I am not familiar with those drinks, I don't pay much attention to them.

Redirect Examination.

I said I am not familiar with them. What I mean by that is that I am not much of a drinker of those drinks. Of course, I see them every day in my business, a great many people I ask to take a drink with me *with* take one of those drinks. A fellow will call for Dope, a Coca-Cola, a bottle of

(Deposition of H. L. Fisher.)

White Rock Water, Apolinaris, something of that kind. In my rounds of the trade here I see these bottles every day. Some of those that have the labels on them are I think this Cherro-Cola, I believe has the label on it, Rye-Ola, Coca-Cola and this Dope and then this Sam Woocester puts out a drink, I don't know what it is, I think it is labeled, I cannot recall any of those bottles that do not have labels on them. **[1025]**

Recross-examination.

I am not interested in any of these concerns. Absolutely no interest. This Dope, the product of a man named Smyly, is made in Birmingham. It is on the market now. I think that is labeled.

Deposition of G. G. Desouchet, for Defendants.

G. G. DESOUCHET.

Direct Examination.

I am forty-eight years old. I live here in Birmingham, formerly in Louisville. Lived here four years, pretty near. I lived in Louisville about nineteen or twenty years. I am engaged in the saloon business at the Metropolitan Hotel Bar, formerly with the Utophia Bar. I was in the same business in Louisville. I am a bar-tender. We handle soft drinks at our bar. We handle soda pop and something we call Dope. We have no Coca-Cola. That Dope, I could not tell you what it is, it is a dark liquid in a dark bottle with a light cap and dark letters on top of the cap. I have never handled in the various places I have worked

(Deposition of G. G. Desouchet.)

any other Cola drink but Coca-Cola and in Louisville Cherro-Cola and Cocoa. Well there has been a number of Cocoas with a little difference in the latter part of the name, instead of making it Coca-Cola they make it Coca—something, you know. I have known that Coca-Cola, of course, first, a number of years ago, I do not know just how long and then these other drinks came out later and for a number of years I have handled a number of Cola drinks. Customers in indicating to me the different Cola drinks they want, some of them call for a Dope and some of them call for a Coca-Cola or soda pop, but of course that is nothing like the Cola drinks. When they come in and ask for a Dope, I give them Dope. Before I commenced to handle Dope when they asked for Dope I gave them anything indiscriminately, any of the other drinks I had there. I give them anything. In our business we considered them all Dope, the whole business. This Dope that I am handling now they can distinguish it from the bottle because in the Dope it is blown in the bottle and the cap you know as I remarked before is light colored cap with dark letters. While the Coca-Cola is red, red letters on top. My Dope has no label on it, Coca-Cola sometimes has I believe a little diamond-shaped label on it. I believe, I am not positive about that **[1026]** because we put them on the ice and everything and when they come out you know, with the exception of the cap of course, they look very much alike and the letters on the bottle. I have never tasted either one of them

(Deposition of G. G. Desouchet.)

but I have been in the business all my life, mighty near. When a man comes in and asks me for Dope I give him Dope and if he asks me for Coca-Cola I tell him I have not got Coca-Cola but I can give him some Dope. Sometimes he says he don't want it, and sometimes he says all right, give me that. Customers ask for Dope using the word Dope. I never have them object to what I gave them on the ground that it was not what they asked for. At Louisville customers frequently came in and asked for Dope. I gave them something besides Coca-Cola, some of the other Cola drinks. I done that for the reason of the price, that it all. Not on account of the goods, that is Coca-Cola costs 70 cents up there and the other costs 50. If they came in and asked for a Dope and I gave them some of the other drinks I consider that I was giving them what they asked for. They all ask for it there. I always considered it as something besides Coca-Cola, that is what I considered when they asked for a Dope it meant something besides Coca-Cola, if they called for Coca-Cola I knew they did not mean Dope.

Cross-examination.

I do not know what they pay for Dope but up there we got it at the same price as soda pop, 50 cents a case. I am not doing the buying. I was doing it at Mr. Halley's, I am at the Metropolitan now.

Deposition of Champ Yeargin, for Defendants.

CHAMP YEARGIN.

Direct Examination.

Age, fifty years old. Live at 810 Tuscaloosa Avenue, Birmingham, Alabama. I have been here, this is the second time I have been here. The last time was about fifteen years. I lived before I came here at Nashville, Tennessee and at Omaha, Nebraska. I am engaged in the saloon business. I handle soft drink. We handle now what is called Dope, I believe, seltzer water and ginger ale. I have been handling this Dope practicaly ever since I have been in Birmingham. Fifteen years, practically fifteen years. We get this Dope from Smyly. I could not tell you the name he is doing business under for I was not doing the buying, I know what he is doing **[1027]** business under now. I think Houppert & Smyly used to be the firm name. Before that I do not know whether it was Smyly or Houppert & Worcester, or Houppert D. Carroll, I know there has been three or four different ones in that business there, mixed up in it, but I do not really knew. There used to be on the cap to indicate what it contains. I think in late years is my recollection, it used to be smooth without anything on it, but it seems to me like in the later years it had the word "Dope" on the cap. I think I have seen a few glass bottles with the name blown in it. I do not recall that I ever noticed any label on the bottle, in Nashville, I do not think we handled anything practically, but soda water, ginger ale and it seems to me

(Deposition of Champ Yeargin.)

like it was sarsaparilla they used to call it, as well as I can remember. Up to that time I do not think we handled any soft drinks, outside of ginger ale, seltzer, sarsaparilla and sodas is all we handled. We did not handle any cola drinks over in Nashville at that time.

Cross-examination.

We pay for this Dope, I believe 65 cents a box, something like that. I am not positive, Mr. Dueker, my partner, looks after the financial end of the business, and the paying. I buy the whiskey and he does not buy any beer. We are still handling this product Smyly's product, or Houppert & Smyly, or Houppert & Worcester's product. I suppose they are still putting it out in Birmingham, Alabama. I could not be positive the first concern that put this product out. It has been so long since I have handled it. I used to pay Sam Houppert and Peter Houppert. He used to come around and it might have been his firm. I think it has been changed two or three different ones in the firm. I suppose it is the same firm, and now Mr. Smyly has been making it. So far as I know it has never been off the market. I have been out at Smyly's place of business. They have a bottling plant and put up ginger ale and sodas. I am satisfied that he keeps up Dope. I think, but I won't be positive, but it seems to me like I have seen a few bottles of Dope blown in the bottles and I have seen caps Dope. I have never seen them making syrup over there, not that I remember of. I never paid any special attention. I went up to see some of the boys. **[1028]**

Deposition of S. M. Tucker, for Defendants.

S. M. TUCKER.

Direct Examination.

Age, thirty-three. I live in Birmingham. Business, clerk or bar-tender, whatever you call it, at the Terminal, at 430 Twenty-sixth Street, in Birmingham. Terminal Bar. We have the Dope, Cola-Nip, Nifti-Cola, soda waters, but the Cola drinks that would be just the Cola-Nip and Nifti-Cola would not it, and we use another soft drink named in the Birmingham business, just Dope. Customers indicate these Cola drinks by asking for a Dope and I give them a Dope. Sometimes they will ask for a Cola, or a Coca-Cola, and I tell them I have not got Coca-Cola, but I will give you a Cola-Nip or give a Nifti-Cola, and they say all right. I always tell them we have not got Coca-Cola. They will say give me a Nifti-Cola or a Dope or a Cola-Nip. When customers come in and ask for a Dope I do not consider they are making a definite and specific request on me for Coca-Cola. Some people will not drink Coca-Cola.

Cross-examination.

Lots of people use the right names. They ask for a soft drink, they do not use any definite name, only what they are. They just use the names that I have described here. That is about all. I have never carried Coca-Cola since I have been in Birmingham. I have been at the Terminal Bar a year. Before that I was at Chattanooga, in the same line of business. I do not know anything about this Dope. I

(Deposition of S. M. Tucker.)

handled different Cola drinks there. *My* Smyly, here in Birmingham, makes Dope. He is making it now. It has got Dope on the cap. I do not think they have any labels on it. There is none of these Cola drinks with labels on them, but if they do have labels they will come off in the ice box. The labels come off in the ice-box and clog up the drain and we fellows do not like it. When they are sold over the bar I take the cap off and put it under the bar and set the bottle up on the bar with a glass and I generally pour it out in the glass. The customer does not take the cap off the bottle. When a man comes into our place of business and asks for a Dope we give this Dope all the time. I never give him Nifti-Cola or Cola-Nip. In calling for Cola-Nip and Nifti-Cola sometimes they call for it by Dope and if I have not got Dope I tell them I will give them Coca-Nip or Nifti-Cola. Dope is like a man comes in and calls **[1029]** for a Budweiser and if I haven't got it I will tell him I haven't but I can give him Schlitz or whatever I have. If they ask for Dope I give Dope because I always think they want Mr. Smyly's product, or they would call for what they wanted. Dope, I suppose, means the Smyly drink. To me it does, and Nifti-Cola and Cola-Nip means Cola-Nip, if a man calls for a Cola-Nip and I have not got it I tell them I have not got it but I can give him something else, something as well. I have not carried Coca-Cola since I have been down there.

Deposition of Omer Reed, for Defendants.

OMER REED.

Direct Examination.

I am thirty-six. I live in Birmingham now. I am bar-tender at the Morris Hotel. I have been there since October, 1911. We handle soft drinks. We handle one Cola drink made here in Birmingham, that *co?co*, spelled coco. We have been handling that since I have been here. Sam Woocester makes that. Dope is the only name we have for it. They come in and ask for Dope. When they ask for Dope I give them that *Co?Co*. I never had any customers reject that Coco when asked for Dope on the ground that it was not what they asked for. There is nothing on the bottle to indicate anything about the bottle to indicate what is in there, only on the crowns, *Co?Co* on the crown. When our customers come in and ask me for Dope I do not consider they are making a definite and specific demand on me for Coca-Cola. The word dope means to me as applied to a soft drink, any of those Cola beverages in my opinion, when a man calls for Coca-Cola I would give him Coca-Cola if I had it, I would not give him Dope. We have people come in and ask for a Coca-Cola. I tell them I have not got it. They will say give me a Dope.

Cross-examination.

I do not know how this word Dope originated. It is too deep for me. I do not know how it come to be used as a name for these drinks at all. I have heard

(Deposition of Omer Reed.)

the word Dope for a number of years, ever since I have been in business, I guess, six or seven years. Before I went to the present place, the Morris Hotel, I was in Nashville. I heard the word Dope used up there. We served some Dope at Nashville. It was a black goods, I do not know what it was. I do not know where it came from. It was in use up there, this Dope. There are other names used at our place of **[1030]** business if they want those kinds of drinks. That is the only name since I have been here, because this *Co?Co* we handle is practically new, I do not expect there are but a few people in Birmingham who know that one drink Mr. Sam *Woscester* makes that is named *Co?Co.* I do not remember that they ever called for it that way. That is the only thing I ever hear them call for here, Dope. I have heard Coca-Cola called for here. Coca-Cola, I suppose I have had it called for in Nashville. I have known of Coca-Cola for some years. We did not handle it in Nashville and therefore I did not have calls. I have known of Coca-Cola ever since I was—ten or fifteen years, I guess.

Deposition of E. D. Montgomery, for Defendants.

E. D. MONTGOMERY.

Direct Examination.

Age, twenty-four. Live, Woodlawn, a suburb of Birmingham. Lived here twelve years. Manager of the Eastern Division of the Southern Bell Telephone Office. I know J. C. Mayfield. I knew him here in Birmingham. I have heard of him and

(Deposition of E. D. Montgomery.)

known of him practically ever since I have been here with my father. I was with him in 1908 in business, in his employ in 1908. I was what you would call, I reckon, a general man around the plant, in the shipping department, filling orders and one thing and another, bottling. Mr. Mayfield was making several different drinks, several drinks. He was making Celery-Cola, Pepsi-Cola, and he had a drink called Creme, I believe, something to that effect, and a Koke, but I do not just remember all the drinks he did put up. This Koke, I don't know what you would call it. It is just a soft drink, as I understand it, something in the nature of an ordinary beverage, just in the class of some stuff as I would say now Coca-Cola, Celery-Cola, Cherro-Cola, in that class of drink, if that is what you want. That is the completed beverage. I saw that syrup, carbonated water put in a bottle that way. He shipped syrup out to the trade. He shipped it in bottles and also in kegs. The kegs were generally painted red, as I understand it. We put labels on those kegs that we shipped this Koke syrup in. He had a label, block letters with the word Koke on them, if that was the drink that went in it, or Celery-Cola, he always labeled each one distinctly, understand. He was bottling these drinks, too, and put a small label on the bottles, a small **[1031]** square label with large black letters on them. He had that kind of label on Koke. Celery Cola was in a diamond-shaped label, most all except Koke, Koke had different labels from most all the rest. The labels were all practically the

(Deposition of E. D. Montgomery.)

same, that is, the same shape and color but the diamond shaped and the same color. Celery-Cola was on the label in a diamond-shaped label, like Celery-Cola is labeled now, something similar to that, or Coca-Cola, something on that style, a script style, with a long "C" that comes down under it something that long. I stayed there in the employment of Mr. Mayfield practically twelve months. His sons were around there. Carl was there almost all the time, and Steve, he was not around there a great deal but he was out most of the time in the city trade. I was there until he went out of business there, he left the city. He went to Texas, I think. He had a plant there, had a place in Texas. I go into soda-fountains now and ask for drinks of that kind. I sometimes use the word Dope in asking for these drinks. When I ask for a Dope I don't know what I expect to get. I get anything in that line of beverage, Cherro-Cola, Coca-Cola, Koke, most any other drink that is put up in that beverage, because they handle so many different grades. Dope also is used, I don't think that is used much in soda-fountains. I do not consider when I go in and ask for Dope that I am making a definite and specific demand for Coca-Cola.

Cross-examination.

I could not say what became of the business when I quit. I quit just before they got ready to leave. I do not know exactly how long, two or three weeks, something like that. The business was located on Morris Avenue, between 21st and 22d street. I could not say the number of the house. I have been

(Deposition of E. D. Montgomery.)

there a number of times since. There is a fish-stand on one side of the building. The machinery consisted of a bottling plant and syrup plant. I do not know hardly how to describe it. They had these mixers where they made the syrups, that was upstairs, and down stairs they had a bottling plant and towards the front was the office. The machinery to make up the syrups, as well as I can remember, he had this boiler. They were selling all those drinks in bottle and syrup form. They had a [1032] very large business the twelve months I was there. They had these bottling machines, I do not know what kind, I do not know what else. The bottling plant was on the same floor as the shipping department, I believe. I did most anything. I bottled. I filled the orders. I could not tell you where they got the labels from, nor the bottles. The exact shape of the Koke labels on the barrels and kegs was square, about three by four, something like that. Something very similar with the ordinary envelope, and on it was printed Koke in block type. They had on the bottles a smaller label, about an inch and a half or such matter, the same shape and the same general get-up. Most of the kegs were generally shipped back in, and they were already red but if they were not they were painted red. That is I understand the kegs were shipped back in and painted after that if they were shipped back in and were not painted. They were painted red, I don't know what I mean by "I understand," not a don't care expression, I didn't

(Deposition of E. D. Montgomery.)
use it that way. Koke and Celery-Cola were the two main drinks. We sold about the same thing of each I guess. I could not tell you how much we sold there. By large I mean the number of people we had there to take care of the business, by the number of orders it was very busy. I could not say the number of orders for Koke, it was large. I could not very well say the number of gallons a month. I could not answer that very definitely. I mean by very large, as I say, if I was in a grocery business, I would say business was good. I do not know as I would have a basis. I could not remember about any number of gallons. It was large enough to take care of the situation at that time. It was good at that time. It demanded to keep what we had there very busy all the time. We had something like six or eight men inside of the plant. I could not remember the names of them right now. Mr. Mayfield and Mr. Pogue were two. I could not tell you whether Pogue was interested in the business. There were several other fellows he had there besides myself, but I do not know them now. They had a bottling machine. I do not know what make of machine or where the labels or bottles came from. They used crowns on the bottles. I do not remember whether it was a plain crown or what. I can not tell you where we got the crowns from. I do not know much about the business. That **[1033]** has been about six years ago—seven years ago. I have not thought much about it, I was young, I think it was the first place I worked, that was 1908, I believe.

(Deposition of E. D. Montgomery.)

Mr. Mayfield and Mr. Pogue were in charge of the business when I left there, that was the older gentleman, Mr. J. C. Mayfield. I did not go back there. I had a position in Woodlawn in a hardware business, and I did not go back. I quit one Saturday night and went to work for the hardware store the next Monday morning. I understood Mr. Mayfield left and went to Texas. I am not sure whereabouts in Texas. I am sure he bottled Pepsi-Cola, as positive that he bottled Pepsi-Cola as these other drinks. We had crowns on the Celery-Cola bottles and I remember they were plain. I do not remember about the other drinks. I know one thing, we had a patented machine that we mashed these crowns over, made them over again. Sometimes we would get them back and that was one reason I say I hardly believe they were decorated. I do not believe they were decorated. I think they were plain. I never heard of Dope until sometime recently. I do not know how long ago. I happened to be in one of the bars and asked for a Coca-Cola, and they said, "I have not got it, I can give you a Dope." I do not know how long ago that was, approximately say two years. If I ask for a Coca-Cola I get Coca-Cola, lots of places you don't get Coca-Cola, in more than half of them you do not get Coca-Cola. I say some places sell Coca-Cola and some don't sell it. They substitute something else when Coca-Cola is called for, it may be Ali-Cola, it may be Cherro-Cola, it may be Gay-Ola, I do not know what, most anything in that line. They have

(Deposition of E. D. Montgomery.)

switched to Cherro-Cola because that is a local product. Half of them substitute, I should judge. They do not care what name they are called for, they give them something else. I have that information, however, I would not swear to it. I happened to be familiar with the drug-stores at the time, with the soda-fountains. I have discussed it, had up arguments about it not being Coca-Cola and lots of cases, some of it is shipped back, something of that kind. I happened to know of one instance where they bought a barrel of Coca-Cola and they had some argument about it not being Coca-Cola, bought through a wholesale drug-store here in town and they had it tested and so on, and wrote to [1034] Atlanta about it and a lot of this kind of stuff. I never did know. I happened to be in the conversation at the time it was argued. I heard it. I do not know what they substitute. I do not know how many there is, really, there is a number of drinks of that class. Those drinks that look alike or taste alike. For that class, they are all very much alike. You could not possibly pass sarsaparilla off, they could not get by with that. There is a class of drink, all in that same grade. I would go in one of these places and ask for a Coca-Cola, I would not know whether I got Coca-Cola or not. I do not know the difference in taste of them, just from its taste. A man's taste changes I suppose, he goes by it most. I do know Cherro-Cola is sweeter than Coca-Cola, that is about the only difference I know. Cherro-Cola is a drink made in Columbus, Georgia.

(Deposition of E. D. Montgomery.)

Coca-Cola is a drink made in Atlanta by the Coca-Cola Company. This stuff Koke that was made down here where I was working for Mr. Mayfield looked like Coca-Cola and tasted like Coca-Cola. I believe anyone asking for Coca-Cola could pass off Koke and get by with it. I don't know any instance where that was done. I did not have anything to do with that end of the business. It is quite possible to do it. There are four or five of those drinks you could set out and I could not tell you the difference to save my life just which is which. I do not know when I first heard of Coca-Cola, a good long time, I guess so far back I cannot remember. I saw it advertised all the time, everywhere you go you see it advertised. I first heard of Koke when I first went to work down there in 1908. I don't think I had ever heard of it before that. I could not say I did. I did not know much about any of them then, I was in school.

Deposition of Al E. Campbell, for Defendants.

AL E. CAMPBELL.

Direct Examination.

Age, fifty-five. Live in Birmingham. Lived here twenty-six years, engaged in saloon business. I know P. L. Houppert and Sam H. Woocester. I first knew them when I first came to the city about '89. They were engaged in bottling, bottling syrups, aerated waters, etc. Why, at that time they were bottling soda-waters, aerated waters and like products of soft drinks. In 1902 I was steward of the Southern Club and purchasing **[1035]** agent

(Deposition of Al E. Campbell.)

for the bar and cafe, and I put in the Houppert & Woocester products. At that time they had aerated waters, Waukesha Waters, aerated waters, sodas, sarsparilla and a product they called Dope. I bought that Dope. I continued to buy it continually while I was steward of the club and afterwards opened up a business of mine and continued using their goods. A paper marked Defendants' Exhibit #24 is a bill of sale between Houppert and Woocester, where Woocester sold his interest in the bottling plant. I think I know Woocester's signature. That is his signature to the best of my recollection. Houppert sold Woocester's interest to Smyly, E. J. Smyly. Smyly & Houppert sold their interest to the National Dope Company. That was a corporation. The National Dope Company continued business quite a while and then I think it was 1911, the name was transferred back or was transferred to the Birmingham Bottling Company. P. L. Houppert is not living. He died October 8th I think was the date, 1911.

(Two sheets of paper marked Defendants' Exhibit #25, purporting to be letters of administration on the estate of P. L. Houppert, deceased, issued by the Judge of the Probate Court of Jefferson County, Alabama.)

I cannot say what that is but myself and Frank Seiver were appointed administrators of Houppert's estate the first day of October, 1911. After that the Birmingham Bottling Company sold that copyright to Mayfield & Mayfield. I know two Mayfields, the

(Deposition of Al E. Campbell.)

ones they transacted their business with was Steve Mayfield and J. C. Mayfield.

(A paper marked Defendant's Exhibit #26, purporting to be a deed on that business to Mayfield & Mayfield, signed A. E. Campbell and Frank Seiver, as administrators of P. L. Houppert, deceased.)

That is my signature and Seiver's signature. It happened that I and Mr. Seiver made this deed to Mayfield & Mayfield as administrators of the estate of P. L. Houppert, First, on account of failing when the business was transferred to Smyly and afterwards transferred to the National Dope Company, the whole, the entire assets of that business was transferred in a lump to Houppert and Houppert failed to have it recorded in Washington that this copyright had been transferred to this company, **[1036]** with the balance of their effects. And, to make the title clear we as administrators of the estate had to assign it direct as an asset of Houppert's. The Birmingham Bottling Company authorized the sale of this business to Mayfield & Mayfield. The actual consideration that Mayfield & Mayfield paid for the business, trademark, etc., my impression is four or five hundred dollars, I forget the exact amount, but it was not over five hundred dollars. Mayfield & Mayfield after they got this business and trademark, etc., deeded it back to the Birmingham Bottling Company and the rights, all their property which had been deeded to them and the rights in Jefferson County for that copyright. The right to use that trade name and

(Deposition of Al E. Campbell.)

sell the goods in Jefferson County. The entire property was deeded back from Mayfield & Mayfield. Everything.

(Paper marked Defendant's Exhibit #27, purporting to be a certificate of registration of the Trademark "Dope" in the Patent Office.)

This is the paper that was in our possession at the time we made the sale.

Mr. LITTLETON.—I tender and offer in evidence the papers which we have marked Defendants' Exhibits 24 to 27, inclusive, as evidence on behalf of the defendants.

Cross-examination.

The firm was composed of Sam H. Woocester and P. L. Houppert. The name of it was Houppert & Woocester. It was in '89 that Houppert went in with Woocester, Woocester had the business prior to that time and they were bottling a general line of soda-waters, ginger ale and all that kind, and they still continued under that name of Houppert & Woocester and with the same men as partners up until 1905. They had a plant, assets, a business, and goodwill. In 1902 they put upon the market a product which they called Dope. That is my recollection. I was steward of the Southern Club and bought Dope. It had a crown on it, is my recollection, with Dope on it, on the crown, and they had a sale for it. It was a carbonated beverage. Peter L. Houppert died about October 8th, 1911. I think that was the date, 8th or 9th, one of the two. In the meanwhile Woocester had sold out to P. L. Houp-

(Deposition of Al E. Campbell.)

pert. He sold that interest immediately. **[1037]** That is Houppert sold to Smyly, E. J. Smyly. That is Mr. Smyly who is still in business here in Birmingham, and the firm was called then, Houppert & Smyly, and they still continued to enjoy all the real estate and assets, including the plant and the whole business, and that whole plant was owned by Houppert & Smyly, that included the trademarks and all of that kind of thing. They manufactured that syrup, Houppert & Smyly. They continued to manufacture a carbonated beverage under the name of Dope. They had that word Dope on the crown and at the same place, and marketed it around Birmingham just as they had before. I think it was 1907, I am not positive whether it was 1906 or 7 that there was a corporation formed and that was called the National Dope Company. That corporation took over the entire plant, business, and assets. They continued to manufacture and sell syrups, soda-waters and aerated waters, etc. Just the same thing that Houppert & Smyly had before and they manufactured the syrup did they. Made it there in the plant. Houppert bought Woocester out previous to that. They had the syrup. I do not know who manufactured it. Houppert & Smyly were manufacturing it when this National Dope Company was organized and that was put in aerated beverage and called Dope. After Mr. Houppert died his interest continued in the business until 1913. Mr. Houppert was a stockholder in the National Dope Company and president, and the interest he had for-

(Deposition of Al E. Campbell.)

merly had in the partnership he continued as a stockholder in the corporation, and he continued to manage it as president, and they continued that corporation, the National Dope Company which they had organized without interruption and operated the entire business formerly operated by Houppert & Smyly. The National Dope Company made the syrup, this syrup Dope. They sold the aerated beverage Dope. Mr. Smyly was a stockholder. Houppert was president. There was for a time interested in that Dope Louis Schillinger. Louis and myself and a man named Smyly. Satterfield was interested later on. I think treasurer was my position and that situation continued until in 1911. It was not a different corporation from the National Dope Company. They just took over the business. The name of the corporation was changed. There was not any change, only some of the stockholders. **[1038]** The business was continued at the same place and had the same assets and did the same thing and the stockholders in that concern were P. L. Houppert, myself and E. J. Smyly, and Leady. He was not an officer, just a director. There was a time prior to the death of Mr. Houppert that Mr. Smyly sold his interest to Satterfield and afterwards I think that was in the latter part of 1911, he bought it back. My impression was Smyly got dissatisfied. He just went out and came right back in. That was the National Dope Company. He was back again in the Birmingham Bottling Company. The stock that Houppert owned was sold to the

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Birmingham Bottling Company, sold to the corporation, and the corporation went on right ahead as before operating the plant, making the syrup and same goods, and holding the same assets except that it was then owned as stockholders by myself, Mr. Smyly and Mr. Leady. Still made this product Dope and labeled it Dope and sold it around Birmingham. I did not make the syrup, the company made it. The Birmingham Bottling Company is still in operation. I am still interested in it. I am still secretary and treasurer. We still operate the same plant and make the same class of goods. If it has been changed much I do not know anything about it. Smyly does the manufacturing. They occupy the same premises and use the same machinery, making this product Dope, selling it around Birmingham and making the syrup just the same as it always has and there has been no change at all that I know of.

Q. There has been offered in evidence a copy of the trademark registration No. 63,033, in the name of Houppert & Woocester, of Birmingham, on a carbonated beverage which shows the word Dope and the date of that application was May 11, 1905, and the date of the certificate is June 4, 1907, it was signed, the affidavit was signed by Sam H. Woocester and the application by Houppert & Woocester, by Sam H. Woocester, a member of the firm, and there it was set out that Houppert & Woocester, a firm domiciled in the city of Birmingham, county of Jefferson, State of Alabama, doing business at Ave-

(Deposition of Al E. Campbell.)

nue C and Twentieth Street, in said city, composed of the following members Sam H. Woocester and P. L. Houppert, et cetera; now, **[1039]** this evidently belonged to the firm of Houppert & Woocester, am I right in that? A. I understood it was. I was not a member of the firm at that time, but to the best of my information they composed the members of that firm of Houppert & Woocester. Woocester on June 16th, 1905, sold his interest in the business for $5,000.00 to P. L. Houppert. That, of course, included the trademark Dope. That was understood. He says, as that bill of sale there says all the assets and this was an asset and that belonged to Mr. Houppert and Mr. Woocester had sold his interest in it. Mayfield & Mayfield's attorneys that was making this purchase found some defect in the transfer and they requested us to make a deed. The transfer to Houppert and to the Birmingham Bottling Company had not been recorded or something of that kind. The trademark had been transferred to the Birmingham Bottling Company but there had not been anything recorded in Washington and to correct that the administrators of Mr. Houpperts' estate made the transfer. When we sold or executed this contract to Mayfield & Mayfield we trasferred this copyright to the trademark Dope. We transferred the business and they took a deed from the—Mayfield & Mayfield, back for the business that we had here and also the trademark for Jefferson County. We did not turn the plant over to them. He transferred it back to us on the

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same day. That transfer is in writing, I think in the office of the company. I have not got it in my possession. I can get it. I will get it and produce it if it is in the possession of the Birmingham Bottling Company. We had no real estate. The plant was transferred to Mayfield & Mayfield and the business was transferred to Mayfield & Mayfield. Read that paper there, that is the only thing, in making an instrument of that kind was to perfect the title to this trademark. We went through the formality, that is about the size of it. Mr. Mayfield did not come in there and own that property. He did not actually come into possession of the safe and what it had in it. I think we would have resented it if he had attempted to exercise any ownership. It was not understood as being a trade, but only to perfect the title to this trademark. That was all Mayfield wanted, this certificate of registration and that was all we sold him. We went through **[1040]** the formality of selling him the goodwill, business and all that.

Mr. LITTLETON.—I wish to interpose an objection to the evidence as to what occurred because the contents of the instrument is the best evidence of what occurred.

Objection overruled and appeal prayed and granted.

Although I have very little recollection of the entire contents of it, there was nothing at all turned over except the certificate of registration, which was all Mr. Mayfield wanted and all we intended to sell

(Deposition of Al E. Campbell.)
him. It was necessary to go through with this elaborate performance because it was conditions raised by their attorneys, Mayfield & Mayfield's attorneys, by Mr. Johnson. He has an office here, R. B. Johnson, he is a patent attorney, a trademark attorney. He advised that it was necessary to do these various things to get a technical right. I do not know whether this deed that was given back was ever recorded. I do not know whether it was sent up to Washington to be recorded. I am not positive whether the Birmingham Bottling Company has signed an instrument to Mayfield & Mayfield, as a corporation; they originally did. The first paper that was turned over, the papers were turned two or three different times, before they satisfied this attorney but I do not know whether they did or not this last time. The Birmingham Bottling Company is making this product Dope now and using this trademark. I do not know whether we are making it under the same formula we always made it under. I do not manufacture. Mr. Smyly makes it. It is made here in Birmingham. I do not know of any change. We are manufacturing this product, and using this formula under the rights we got from Mr. Mayfield, that is just the instruments that were passed between them. Anything that is done is shown in the instrument. As an officer of the Birmingham Bottling Company, the Birmingham Bottling Company gets its rights to manufacture this Dope syrup from Mr. Mayfield and his companies by the transfer that was made. The National Dope

(Deposition of Al E. Campbell.)

Company and the Birmingham Bottling Company have a formula which they used in the manufacture of this preparation Dope, which we sold, and that that formula has been the same right along. That has been my understanding of it. We [1040½] had the formula right along. We did not transfer any formula to Mr. Mayfield. From what I understand, my answer to that is that we are using practically the same formula we have used all along. If there are any changes made, it has been done by Smyly without saying anything to us. So far as I know the formula has always been the same thing. That formula originally was sold to us by Mrs. Brown, Mrs. Diva Brown. She claimed to have been an ex-wife of Mr. Mayfield, J. C. Mayfield. We bought that formula, I think that was 1907. Before that our product was being manufactured in the place by Peak. I do not know what his name was. In 1907 we went to manufacturing by this formula we now have and now are using. In 1902, I know, I have been around connected with the concern and Houppert just called the drink Dope. That is a long way back, I don't quite remember. I know he was calling his product Dope at that time. I was buying from him then. In 1907, I do not like to go back that far. Understand this, I have never been connected with the concern in an active way, in any way except in the short while that I kept the books, that was in 1911. I have owned stock in the concern but only go around the concern just occasionally. So far as I know I do not know of any change. I understand,

(Deposition of Al E. Campbell.)

my recollection is those papers—the paper was originally made up and signed by the Birmingham Bottling Company and turned over to their attorney and since then there has been several changes and I have lost sight of the original paper and I do not know what became of it. That was the last paper that was made up there. Exhibit #26, signed by myself and Mr. Campbell, I was asked to sign this paper to make the title clear. I do not understand it that it took the place of anything, that was only perfecting the title.

Mr. ROGERS.—Mr. Littleton, I wish to have it appear in the record that I shall probably want to ask Mr. Campbell some more questions when he produces the document I have asked for.

The WITNESS.—I do not know whether we have the originals of those or not.

Mr. LITTLETON.—What he is talking about is the license for Jefferson County.

The WITNESS.—Oh, undoubtedly Mr. Smyly has that in his possession. [1041] I have no idea the number of the trademark registration. Mr. Mayfield came to me and asked me if we did not have that registration and I told him that we did and he wanted to know what we would take for it. Nothing was said at that time about any property other than this registration. Myself and Smyly agreed upon terms with Mr. Mayfield. The actual consideration was about five hundred dollars. Then came the question of how the title was to be made. We were selling this trademark, or thought we were, to Mayfield & May-

(Deposition of Al E. Campbell.)

field for five hundred dollars. I think he was advised by some lawyer that it was necessary to take over the entire business. I think that was the understanding, that must have been his advice. We executed an assignment which carried the entire business and goodwill as well as the trademark. We did not sell him the entire business and goodwill for five hundred dollars, and immediately there was a bill of sale given by Mayfield & Mayfield back to the Birmingham Bottling Company. The consideration for that was one dollar and that included everything but this trademark and the rights on that trademark in this county. What was actually sold in that transaction for five hundred dollars, was the trademark and nothing else. No business actually passed and no property, tangible property was transferred. How much was that business, goodwill and property of the Birmingham Bottling Company and Houppert & Woocester worth, I have never thought of it, but possibly I would say, in fact I know the business would inventory about eight thousand dollars. At the time we made this transfer I did not disclose to them the formula under which the product was made. Nobody else did so far as I know. No formula was included in that contract from Mayfield to us or to the Birmingham Bottling Works. After the assignment I and the Birmingham Bottling Company and the successors of Houppert & Woocester, continued business just as we had before. We do not buy any syrup from Mr. Mayfield or the Koke Company, Southern Koke Company or any of those Koke Com-

(Deposition of Al E. Campbell.)

panies. We still make the syrup over there. We make it according to Mrs. Diva Brown's formula so far as I know. I knew Messrs. Houppert & Woocester in 1902. That was my first recollection of this product Dope, my first recollection of their putting [1042] out a Cola product that they called Dope was in 1902. It was somewhere right along there. I got my dates from the fact that I went to work for the club there along in November, I think, of 1902, and I began to buy the product from these people at that time. I was buying something, it was either right at that time or the following spring, I was buying a product that Houppert called Dope. He made an application and he had that application in for that for several years. I knew he had quite a time getting that, too. I was in the bar business prior to that time. I had never heard of the word Dope before they began to use it. I do not recollect as I ever heard of the expression Dope before. That is a long time, it might have been used and it might not have been used. I do not know whether I had heard of the product Coca-Cola before 1902 or not.

Q. 301. I thought you stated, Mr. Campbell, which is a fact, isn't it, that the Birmingham Bottling Company continued to use the trademark Dope after the sale to Mayfield & Mayfield, and are using it to this day and are now using it? A. Yes, sir.

Q. 302. On a product that was and is manufactured by the Birmingham Bottling Company? A. Yes, sir.

Deposition of A. F. Watkins, for Defendants.

A. F. WATKINS.

Direct Examination.

Age, thirty-two. Live, 2818 Juniper Avenue, Birmingham. Lived here at Birmingham thirteen years. I knew J. C. Mayfield. First met him right here in the city, in Birmingham. He was engaged in the bottling business, manufacturing of syrup. He manufactured Koke, Celery-Cola, and I think he manufactured extracts, some extracts, I do not recall their names. I was over to his place of business quite a good deal. I saw barrels, kegs and stuff of that kind. They were painted red. He labeled all of his stuff on the barrels containing this Koke syrup, he put the word Koke, a label, broad and square label, block letters, with the word Koke. He bottled that Koke, too. He put it up in at one time, I think a kind of tapering-necked bottle more like an Apollinaris Splits, more like something of that kind. He put labels on those bottles. On those labels was the word Koke as well as I can remember. I knew Mr. Mayfield from that time up to about six years ago, he left the city. I do not know where he went when he left here but I have been told that he went to Dallas, Texas, in fact, he and his son told me that they were in Dallas. I knew his sons. He continued to manufacture that product Koke up to the [1043] time he left here. I am manager of the Burnick Billiard Academy at the present. I have been in the advertising business up to two weeks ago, for the last eight years. I have seen advertising of this product Koke

(Deposition of A. F. Watkins.)

in banner form and paper and streamers, banners, cloth, and paper, too. Whatever it takes to make the signs, whether it is in cloth or paper, it is streamers or banners. I have been in the advertising business about eight years. I placed advertising for Koke. Mr. Mayfield gave me one advertisement for Koke about seven or eight years ago, seven years I guess, about now, as well as I can remember, in the Jefferson Theater program, of Koke. These advertisements I speak of, the streamers and that stuff were in all conspicuous places where the public could see, along the thoroughfares and things of that kind in Birmingham and out of Birmingham. I imagine this was about ten or eleven years ago. I do not recall the amount. I remember seeing it but there was a good deal of it, as well as I can remember, quite a lot of it.

Cross-examination.

He placed an advertisement with me for Koke; I won't be positive about this time, it was during the Jefferson Theater season there, seven or eight seasons ago. I put it in there. The advertisement went into the theater program and that Jefferson Theater is still running, still in existence. It was located at that time at the same place it is now. I do not remember the extent of the contract, at that time I was getting out the programs for the Murphy Advertising Agency. It is out of existence. Robert E. Murphy was connected with the Murphy Advertising Agency. He is with the Durant Mineral Company here in Birmingham. I do not know as I can describe them,

(Deposition of A. F. Watkins.)

except to call them banners. They were streamers, advertising. I should generally imagine a streamer would be anywhere from one foot to six inches in size. You can make it three feet or eighteen inches, up to thirty feet by three feet. I do not exactly remember th size of them. They were placed on public thoroughfares, as well as I can remember. I saw them from the street. I cannot exactly remember what public thoroughfares. These streamers were cloth. If it is an advertising streamer it has got to have printing on it. You could not take a blank piece of stuff out there and make a flag or a streamer out [1044] of it. You can have it that way, you know what a streamer is.

Mr. LITTLETON.—I wish to interpose an objection to this form of cross-examination. The witness has explained two or three times what he means by a streamer and counsel keeps asking if a streamer is a piece of cloth, of any kind of cloth, or any size, when the witness has already designated the size of the streamer.

Mr. HIRSCH.—In reply to that I beg to say that although Mr. Littleton might know from the witness' testimony what a streamer is, the examiner does not know.

I told you I did not know what size that streamer was. If the Coca-Cola Company are that much interested, they should have gone around and measured up the streamers. They were about two by six or two by four, something like that. They were tacked in conspicuous places, I do not remember where I saw

(Deposition of A. F. Watkins.)

the streamers. I might have seen them on the side of a house. I just remember seeing them with the word Koke, that was on them. This is not for the record, but they looked about as if a hen had stepped in water and then went across it, you don't put that in. It might have been that way, but the Koke was in block letters printed on it. I do not recollect anything that was on the streamers, gentlemen, but the word Koke. It was advertising the drink and it had other words on it relative to the drink proposition. I cannot remember what other words it had on it. I do not exactly remember now the name of that firm down there I frequently went to. I remember the kind of labels that were put on the bottles. If I am not mistaken it was the J. C. Mayfield Manufacturing Company. I won't be positive of that, but as well as I can remember that is what it was. Their business was located on South Twentieth Street, when I first remember, and then they moved over on Morris Avenue. The label was not exactly square, I won't be positive whether they were square or a little longer than they were broad, I won't be positive about the shape of the label, but it seems as well as I can remember they were practically square. I imagine they were about the size of a large envelope, about 9x4 or 8x4, something like that, in block letters. I am not positive about whether it was [1045] blue or black, or what color it was. I said I thought they were in block. I am not positive about the color. It might be blue or black. When I first met these people I was out at the university high school, as well as

(Deposition of A. F. Watkins.)

I can remember. I do not know exactly whether that was right or not. The University High School here in the city of Birmingham. I am not positive as to the shape of this Celery-Cola label. I am not positive, either, as to the way the celery-cola was printed. I do not remember whether that was script or block. The word Koke was in block. I did not shoot craps for a living. I lived off the interest of my money, until about eight years ago I went into the advertising business. I am still in the advertising business. I am by myself. My concern has not got a name. I have my own business. It is located 552 Brown-Marx Building. I am by myself. I took up the managership of the Burnick Billiard Academy eight weeks ago. I have not gone out of the advertising business. I have been in several different businesses, with Spurrell Hodges Installment business, that is a form of advertising, though. I do not recall when I was with this Spurrell Hodges concern. I came from Indianapolis about five years ago. I left there and came down here, too. I was in Indianapolis about four months. I was with that concern about a year. I told you I had seen the streamers once, last and all the time. I saw the streamers, and if you want to know it you had better write it down, put that over there. I saw them ten or eleven years ago. I have not seen them since. I was in Birmingham and more or less I have seen advertising of their different lines, lines of their Celery-Cola, Koke and other extracts. Besides those streamers I have seen paper stuff, tacked stuff. I have seen some paper

(Deposition of A. F. Watkins.)

stuff, they sent hangers out and things of that kind that they put up. That was about the same time, ten or eleven years ago. I do not think I have seen anything since they left Birmingham but I have seen them right along up to the time they left Birmingham. I do not know the date they left Birmingham. I could not tell you the family history. Up until about eight years ago I frequented the place pretty often. Off and on I saw different classes of advertising. I did not say all of it had Koke on it, no.

Q. Did any of it have Koke on it?

A. How the hell do I know. [1046]

Redirect Examination.

Mr. Mayfield also advertised his other drinks Celery-Cola, and these other products. I have seen these other products advertised, I think, not in this class, but with the label on it, on the barrel head, and I have seen them labeled.

Deposition of W. H. Brandes, for Defendants.

W. H. BRANDES.

Direct Examination.

Age, thirty-four. Live 713 South Tenth Street, Birmingham, Alabama. I am in the saloon business. I am a bar-tender. I have been working behind the bar about sixteen years. I am working at the Florence Hotel Bar, the bar at the Florence Hotel. We dispense soft drinks at that bar, ginger ale, seltzer and Dope. We handle no Cola drinks there besides this Dope. I suppose Dope is made by Mr. Smyly. Birmingham Bottling Works is on the package top,

(Deposition of W. H. Brandes.)

Birmingham Bottling Works. I have known of that product Dope that I am now handling ten or twelve years, something like that. Ten or twelve years ago it was Houppert & Woocester. We handled some of it back there. I have not handled it continuously since then, but I have handled it off and on, some places I have handled it, and some places I have not. To me it has the same taste now it had before, and has the same color it had before. It is the same drink so far as I know. Customers come in and call for it, whatever they want, they come in and say give me a bottle of Dope, call for whatever they want. When they call for a bottle of Dope I give them a bottle of Dope. When they come in and ask for this Dope I know that they want this Dope, by their calling for whatever they want, at other places when they come in and I have handled Cola-Nip, Rye-Ola or Coca-Cola and they come in and call for it, if I have not got what they call for I tell them I have not got it, and they will say; "Well, give me whatever you have got." They have indicated that they wanted this specific product. They come in and say give me a bottle of Dope, and they will say, is that dope? I say, "Yes, sir," and show them the crown, show them the bottle, the crown on the bottle, and when they have called for the others I have done the same thing with the others you know, when they came in and asked for a Dope, I showed them the crown with the Dope on it. When they came in and asked [1047] for Dope, and I showed them the crown with the Dope on it, they indicated that that

was what they wanted. I do not know how many Cola drinks there are on the market here. There are quite a bunch of them, I guess I could recall a lot of them. I see the wagons and see it advertised.

Cross-examination.

I suppose Mr. A. E. Campbell is connected with the bar I am with. I suppose he is one of the proprietors. He is one of the owners. The last time I have been there since last Setember, I was there once before with Werthheimer; Werthheimer owned it at that time. I think we were selling Dope then. I am not sure; I think we did. We were not handling Coca-Cola. We did not have Coca-Cola, at least I don't think we did, but we were handling—I don't know whether it was Dope or Rye-Ola or whatever it was, I do not know. I could not say. I left Werthheimer a while and then went back. I went down to the Mecca Bar in this city. I handled there Cola-Nip and Coca-Cola. When Dope was called for, I told them I did not have Dope. I told them that I had Coca-Cola and Cola-Nip. I could not say exactly when I first heard of the word Dope, ten or twelve years ago. I do not think I heard anything of the term Dope before that. I might have. I do not think I heard the word Dope, but after it came out I heard about it, here, and handled it afterwards when I worked for Dunker Brothers. The first work I ever done was in the City Market, and then I went to work for Werthheimer, old man Werthheimer, on Fourth Avenue and Ninth Street. That was sixteen years ago. That was a saloon. I think he was

(Deposition of W. H. Brandes.)

handling soft drinks. I do not know what, that was too long ago; I could not say. I do not think he handled Coca-Cola. I could not say; I could not answer that. It has been too long ago. I finished there about six years ago. That was the first six years after my work at the market; that was for old man Werthheimer, that was at First Avenue and Sixteenth Street. The name of the place was Miner's Retreat, and then the Grotto. I do not think I ever heard the term Dope used there at all. After I left there and went to work for his son, and his nephew out in Ensley. That was a saloon. I do not remember whether they handled any soft drinks. I do not remember whether I ever heard the word Dope there. [1048] I think I went to work then for Dunker Brothers, the same line of business. They handled Dope at their place. I think that is the first place I handled Dope. I do not remember whether it is the first place I recall ever hearing the term Dope, that has been so long ago now, but I know that we handled it there and had calls for it there. That was about 1905, or '6, when I started working there and then after I left there we had prohibition for four years. Prohibition was here, I think, at the beginning of 1908. While prohibition was on I worked for the A. G. S. That was the railroad. I went to the soda-fountains a few times. I go to the ball park at Birmingham, the base-ball park. I have heard them say give me a bottle of Cola. I do not know as I have heard them say a bottle of Koke, only when I buy it, I drink some myself. I call it Coca-Cola. I guess

(Deposition of W. H. Brandes.)

I have heard them call for Dope, give me a bottle of Dope. I do not know what they serve out there; I do not think I have heard of any of these drinks besides Coca-Cola out there. I think this product I refer to as Dope was originally made by Houppert & Woocester, here in Birmingham and then by Houppert & Smyly. I do not know who makes it now. I guess Mr. Smyly makes it now. It has been on the market right along here in Birmingham since the first time I heard of it. It is on the market now. It has the word Dope on the crown as it always had. It used to have labels on it, if I remember right. It had labels on it about six or eight or nine years ago. I do not remember exactly whether anything else on it or not. Dope was on the label. D-o-p-e, like it is on the crown now. It is the same as it is now on the crown, the letters as best I can remember. The way I remember it now, he had something on the label, a girl, and I believe it is the same as it was then. I will have to get you a crown and look at it. It has the word Dope on the crown. It was on the label. It has almost always been the same. At least I think they are the same on the label as they are on the crown. I never heard the word Dope until I heard it in connection with Houppert & Woocester's and now Houppert & Smyly's product. The word Dope is printed on the crown, red, a sort of silvery crown. I do not remember what a Coca-Cola crown looks like. If customers ask for a bottle of Dope, it is served to them in [1049] the bottle. We have a box under the bar for the crowns. We have an opener

(Deposition of W. H. Brandes.)

fastened on to the bar, and when we open the bottle the crown will drop down into a box under the bar for it. I do not know how much this Dope made by Houppert & Smyly cost. I do not do the buying. Mr. Campbell and Mr. Fabian do that.

Deposition of John Smith, for Defendants.

JOHN SMITH.

Direct Examination.

I am forty-eight years old; live in Ensley, Alabama, a suburb of Birmingham. I have been right there ten years. I lived before that in Thomas. I stayed there nine years. It is out here on the north end of the car-line, I stayed, that is suburb of Birmingham. I know Mr. J. C. Mayfield. I think, as near as I can remember, I first got acquainted with him, it was about 1903, I think, somewhere along in there. I was in the works and had a little store in the cafe that I run, and I got acquainted with him just about that time. It was a cafe and it was a grocery store. About that time he was on Twentieth Street and about that time, and I bought all my drinks from him that I used at that time. I bought from him Koke and Celery-Cola was all I bought. I continued to buy that Koke and Celery-Cola from him close to four years, if I am not mistaken it was about four years. I am agent for the Semont Solvia Company at Ensley, I am labor agent and also run a store and cafe there in the yard, in the same building now. I am a stockholder in the Penny Savings Bank.

(Deposition of John Smith.)

Cross-examination.

This business I am engaged in is a by-product plant they call it. They have coal they burn and the by-products are taken from that. I have been with them ten years. I was with them around 1905. I knew Mr. Mayfield first in 1903, and bought this Celery-Cola and Koke for four years, I guess that is about right. I only handled it when he was here. You did not understand. You see I stayed in Thomas nine years, there, nine or eight, somewhere along there and I moved from there to the Semont Solvia Company and I have been there ten years. I have been in this State about nineteen years. I do not think I have ever handled this product Koke since I have been with this Semont Solvia Company. I [1050] handled no other goods from Mr. Mayfield at that time besides Celery-Cola and Koke. That was about all he handled. He did not have anything that I knowed of, if he did and if I bought some other stuff from him, some other bills—I am not excited, I stutter, you see. And this was during the time that I used any of his products. I was up there to his place of business almost every day, myself and I just gave the orders for whatever I wanted if I come into his place. I do not think I ever send any written orders because I was up there every day myself. I think I bought the stuff from him, here at Ensley and when I bought all the stuff I bought from him it was out there, that was while I was staying in Thomas. Sometimes he hauled it out and sometimes I hauled it out. If I had a horse of my

(Deposition of John Smith.)

own I hauled it myself. He always sent it out by dray mostly, except the times I took it out. I paid cash when I ordered. I do not think he had a collector to come out and take our orders. I ordered, I was in Birmingham almost every day and I went around to his place of business and placed my orders mostly. I could not tell what else he was making at that place of business because I did not pay any attention to all the stuff he made. I do not think they sold any product known as hop ale. I never bought any. I may have seen some stuff by the name of Creme, I do not know, it has been a long time ago. I believe he did have a product named Pepsi-Cola. I do not think I bought any of that but I think he had Pepsi-Cola. I remember Pepsi-Cola all right. I was never arrested for selling any of Mayfield's products. I have never been arrested in my life. I do not think I had a Revenue license, a Government Revenue License while doing business and buying goods from Mr. Mayfield at any time. I did sometime, some one time, but I don't think I had them when I was handling his goods. I was buying some stuff, I forget the gentleman's name, but he stayed on First Avenue and if I was buying some hop ale from him at that time I had Revenue License; I do not think, really, I had any for Mr. Mayfield at that time. I do not remember to be positive with you, to tell you the truth. I do not think it was during the time I was buying from Mr. Mayfield. I think it was either before or after that. I could not tell **[1051]** you just exactly. I will

(Deposition of John Smith.)

have to study it up, but I know I had some but I do not really know whether it was the time I had them when I was in for ordering his or not. I state positively that I was never arrested for selling any of Mr. Mayfield's products. I never saw any whiskey around Mr. Mayfield's place or any light wines of any character or any beer. I could not tell you what was in his place these times, I would not be telling you something right. I did not pay any attention to it, to just go around and examine things. This Koke from Mr. Mayfield came to me in cases. In the cases there were bottles. I think about 24 to the case. I do not remember whether there was anything on the cases at all or not, but they had it on the bottles. They had Koke on the bottles. It was in a little, bitty, small piece of paper and the paper over the crown. They had K-o-k-e on the paper. Now, let me see and show you what it was in; I think it was just a little star. I think it was a little square thing like this. I am not speaking of label on the crown. I think there was a crown on the bottle, had to be pulled out, a stopper or some way to keep it from coming out. I do not believe there was anything on the crown. I believe it was one of these tin crowns like they use on the bottles now but it did not express anything on the crown at all. The label was pasted on the bottle, was a small thing, I suppose about like this. It was a very small label and it had on the label K-o-k-e. It was not in black type like the Arcade Theme Tablet. It was that style about like that (indicating), the word

(Deposition of John Smith.)

Koke was stamped on there, it looked like. It seems like it was stamped on there, that is the way it seems to me. [1052]

Deposition of A. E. Campbell, for Defendants.

A. E. CAMPBELL.

Direct Examination.

This is the deed or assignment of the business and good will of manufacturing and selling this Dope syrup that I was asked with reference to yesterday, from the Birmingham Bottling Company to Mayfield & Mayfield (Defendants' Exhibit No. 28). I know Mr. Smyly's signature. That's his signature. This is the exclusive license for Jefferson County granted to the Birmingham Bottling Company by Mayfield & Mayfield. That is Smyly's signature and mine (Defendants' Exhibit No. 29). That is my signature, there, attesting the papers as secretary of the company. Offer in evidence as Defendants' Exhibit No. 28 and 29, the papers above referred to, as evidence on behalf of the defendants in the above-styled causes.

Cross-examination.

The actual amount of money that passed was between four and five hundred dollars. That was all. Mr. Smyly whose name is signed to these documents is president of the Birmingham Bottling Company. He lives here in Birmingham. He is in the city now.

Deposition of E. J. Smyly, for Defendants.

E. J. SMYLY.

Direct Examination.

Age, forty-five. Live in Birmingham. Lived here twenty-five years. Engaged in bottling business. I am bottling soda waters and Dope and almost all kinds of aerated waters, seltzer water. That Dope comes under the head of Caffeine drinks, a Cola beverage. I have known of that product, Dope, to the best of my recollection about fifteen years, when I was working for Houppert & Woocester. I think they were making it fifteen years ago. I acquired an interest in the business of making and selling that syrup in 1905. Prior to that time Houppert & Woocester dissolved partnership. Houppert took the business. Woocester sold out to him. I bought a half interest from Houppert. We did business under the name of Birmingham Bottling Works. When we first went into business together it was called Houppert & Smyly, Birmingham Bottling Works. We stayed in partnership until we organized the National Dope Company and we continuously made this product up to that time. [1053] After we organized the National Dope Company the business good-will, etc., was transferred to that company. We formed a stock company. The National Dope Company manufactured and sold syrup. We continued under the name of National Dope Company until sometime in January, the latter part of January, 1911. After that we reorganized and incorporated under the name of

(Deposition of E. J. Smyly.)

Birmingham Bottling Company. The Birmingham Bottling Company manufactured and sold this syrup after that. After that, we sold the rights, excluding Jefferson County, I mean not including Jefferson County, to Mayfield & Mayfield. That is the instrument. That is my signature there as president. That correctly states what was sold to Mayfield & Mayfield. I turned them over the accounts, to Mr. Steve Mayfield, the accounts I had on the books, and the customers we had been shipping to prior to that time, the customers out of this county. This Birmingham Bottling Company were making other products besides Dope—a general line of soda waters. We just sold Mayfields the right to make Dope. After that the Mayfields gave us back a license, an exclusive license for Jefferson County to manufacture and sell that product in this county. That is it (Defendants' Exhibit #29). I made the syrup all the time. No particular change in the formula was made, only we changed the way of making it. We used to, at one time, make it out of a green syrup but afterward got to cooking it in a kettle and mixing it in a tank. Mr. Houppert bought a formula from Mrs. Diva Brown. That formula was not very much different from ours. She specified in her formula that we had to cook the syrup, boil it, mix it in a mixing tank, where we had been making it in a barrel. We had trouble with the goods souring before. It would sour on us, the way we were making it out of green syrup. The product we made prior to the time of buying this Dive Brown for-

(Deposition of E. J. Smyly.)

mula, so far as taste is concerned, tasted about the same, a caffeine drink. The color was the same. At the time of this sale to the Mayfields I showed him the formula. The formula we had been making it by and [1054] he said he knew the formula, Steve did, his mother—the woman who was Mrs. Brown, was his mother, she had formerly been Mrs. Mayfield, was practically the same formula, he said. When I was working for Houppert & Woocester, they used a label marked Dope and after I and Mr. Houppert began doing business together we used a label and we used the crowns afterwards, we used labels at first and afterwards got a decorated crown. When I and Mr. Houppert sold to the corporation, the National Dope Company, the instrument evidencing that sale was in writing. It is the label we used to mark Dope with (Defendants' Exhibit No. 30). I have not the assignment from myself and Mr. Houppert to the Dope Company. It would be in the minutes I suppose—Mr. Letardy was the attorney, A. Letody, I believe. A representative of the Coca-Cola Company called on me. There is a gentleman sitting over there at the table, Mr. Pierce, there, the chief detective of the Coca-Cola Company.

Mr. HIRSCH.—We object to that, and move to strike the question.

Objection overruled and appeal prayed and granted.

I did not know he was a detective. He represented himself to me to be an attorney, I believe, or

(Deposition of E. J. Smyly.)

Mr. Stewart told me he was an attorney. Mr. Stewart is auditor for the Coca-Cola Company. I cannot remember the conversation exactly, but he talked to me and wanted to know in regard to whether Mayfield & Mayfield—I believe the Koke Company, what they bought from us and so forth, if they bought the particular trademark. He said they were getting up evidence to try and put them out of business, or have the word Dope excluded at Washington.

Cross-examination.

I was not a member of the firm or interested in any way in the firm of Houppert & Woocester. I was connected with them only as an employee. My job over there then was manager, looking after the plant. I first went with that firm about 1900, I should judge, somewhere along there. When I first started to work for them there was not any cola drinks on the market then, much here, but one or two possibly. Coca-Cola was not on the market. **[1055]** I believe they were not bottling it here at that time. I do not think—I am not positive, that they were on the market here at that time. If I remember right Mr. Whitehead opened up a bottling plant here and operated with another man, a Mr. Johnson, who took it over afterwards, is to the best of my recollection. I think Coca-Cola was on sale at the soda-fountains. I think it was advertised, I would not be positive, that was so far back. I acquired my interest in the firm in 1905. Mr. Woocester sold out to Mr. Houppert and I acquired part of Mr. Woocester's interest. That was in 1905. The firm name when I

(Deposition of E. J. Smyly.)

bought in was Houppert & Smyly, Birmingham Bottling Works, Houppert & Smyly, proprietors. That continued until the National Dope Company was organized. That was in 1909. It existed until the Birmingham Bottling Company was organized; we reorganized and changed the name to the Birmingham Bottling Company in January, '11, and since then the business has been conducted as the Birmingham Bottling Company, that is a corporation organized under the laws of this state. The location of the place of business has been in the same place all the time, it has never been moved, and the National Dope Company was making this general line of soda waters, as well as selling the preparation Dope. Houppert & Woocester and the Birmington Bottling Works did not ship syrup. They made the syrup, however, for their own use. When the National Dope Company was organized, they commenced shipping syrup, they increased the capital stock and began making and shipping the syrup. The Birmingham Bottling Company shipped some, but not much. This Exhibit No. 30 was first used. They used a label all the time because they did not have the decorated crowns, even when it was Houppert & Woocester. It was a label something similar to that, only it was in a block type, to the best of my recollection, instead of being red it was in black. I think they were made here in Birmingham. I had the label changed myself when it got to be Houppert & Smyly. That was about 1905. I think, the best of my recollection is I had them made at the Alabama

(Deposition of E. J. Smyly.)

or at the City, I [1056] cannot state which, they used to do my work, the Alabama Paper & Printing Company and the City Paper Company. The label Exhibit 30 was begun in 1905, to the best of my recollection, somewhere along there. I cannot state who printed it, I do not know whether they sent away and gave them the order or they made them here. I think it was one of those companies I have just named, either the City Paper Company or the Alabama Paper and Printing Company, I believe is the style of the firm. Those firms have all changed. The transaction between our company and Mayfield & Mayfield, Mr. Campbell done most of the negotiating, I believe, I was sick at the time. I was in the hospital. He knows what occurred, he was secretary of the company. I was around. We talked it over together in regard to selling out the right for the use of the name. The proposition was that Mayfield & Mayfield, Steve Mayfield and J. C. Mayfield wanted to buy this registration. That is this registered trademark Dope, and the result of the negotiation was that they purchased this trademark. We continued in the use of it since the date of that transfer and are doing it now. I make my own syrup as I always did. I have not changed the formula. I did not sell them my tanks. I sold him some stuff there, but he said he did not need it and he just left it there, it was included in the bill of sale—some mixing percolators and so forth. I think they are over there at the place in the warehouse. I suppose Mr. Mayfield was mostly interested in this registration.

(Deposition of E. J. Smyly.)

I would not have sold out my business for $450.00, and the $450.00 that was paid does not represent the purchase of the Birmingham Bottling Company. I do not know what it would exactly inventory at now. I might sell it for eight thousand dollars. It was in mighty bad shape in 1913. We did not sell the business because we were making other things, we were making all kinds of soft drinks, soda waters, and we continued to manufacture this product Dope, just the same afterwards. They deeded that back to me for Jefferson County. This registration that we sold to Mr. Mayfield or Messrs. Mayfield & Mayfield, states that the first use of the [1057] word Dope by Houppert & Woocester was in the year 1903. Mr. Woocester filed the registration papers himself. When they first commenced putting up the Cola drinks, they called it those days, they called it Dope. Houppert & Woocester, I do not know whether they started in 1900, or the exact year they started to sell because I have no record of any sales that was made before them. It might have been that was when we started putting it out, in 1903. I don't know whether I ever heard the word Dope used at that time, that has been so long ago it is beyond me. We sold it under the name of Dope, Celery-Cola and all those drinks were being manufactured around here at the time and they called for them under the names they were put out under. I should judge I had heard of Coca-Cola at that time, in 1903. I do not know whether I ever heard Coca-Cola called for under the name of Dope, or not in 1903. I have

(Deposition of E. J. Smyly.)

been at the ball park and heard people say, give me a Dope, and the boys would go ahead and sell it by the name of Dope, under the name Dope, until they stopped them and made them sell by the name of Coca-Cola. Coca-Cola is a product sold at the ball park exclusively now, I think. I do not know whether Coca-Cola was spoken of and asked for as Dope in 1900 or not, that is beyond my recollection, 15 years ago. When Mr. Pierce called on me, Mr. Stewart was with him, I think. He represented himself as auditor for the Coca-Cola Company. I believe he said he was auditor for the Birmingham Coca-Cola Company. That was some time last year, I believe. It was about August 21st, 1914, some time in August. I sold the goodwill along with the trademark. This sale consisted of the name Dope and the formula. I showed them the formula. He had the same formula, practically the same formula and said it was the formula. Mr. Mayfield said it was practically the same formula. He knew my formula for the simple reason that he had made it with his mother. He said it was the same because he had made it with his mother. I gave him all my accounts, the National Dope Company had, the people they had shipped to throughout [1058] the south, during the time they shipped syrup, the list of accounts, customers we had done business with a couple of years, up to '11, along there. Between 1911 and 1914 we had not shipped any of this syrup. I did not sell them machinery. There were some percolators that I sold. They did not take those.

(Deposition of E. J. Smyly.)

Mr. Pierce represented himself as a lawyer. I did not know him, and Mr. Stewart presented him to me, that he was an attorney for the Coca-Cola Company and wanted to have a talk with me. He had been down there once before, he said they were not after me. The National Dope Company was the last of the concerns I was connected with, that sold any of this syrup out of Birmingham in bulk. The Birmingham Bottling Company might have sold a little, I cannot say as to that, but I turned over the accounts, we used the same books, we kept on with the same books, the Birmingham Bottling Company did, that the National Dope Company had and I collected up some of the accounts after we had reorganized. Those accounts that we turned over to Mr. Steve Mayfield, I think, had been made by the National Dope Company before the name was changed to the Birmingham Bottling Company. They were on the books of the Birmingham Bottling Company. Some owed some accounts and I just gave him the list of them. I could not say the number. I had the bookkeeper make them out on a slip of paper. There might have been a dozen or two dozen. They were people that the National Dope Company had shipped to a couple of years before. I think I myself turned it over to them, to Mr. Steve Mayfield. They were names that our association, the National Dope Company, had sold this Dope to, while they were shipping syrup. It was made right here under that formula that Mrs. Mayfield or Mrs. Brown sold them, the same formula we had been

(Deposition of E. J. Smyly.)

using all the time. I think it was purchased in 1909. The formula we used from 1903 to 1909 came through Mr. Worcester, he was the man that made all the extracts. I do not know where he got it from. I cannot tell you any detail or difference between these two formulas. The only trouble we had with the [1059] syrup was souring, as I said, we changed around, anybody makes changes you know. They were practically the same formula, just some little change we made with regard to mixing and cooking the syrup. The body of the drink was about the same, a Cola drink, a caffeine drink. I manufactured under the same formula. I was the mixer, manufacturer, that was my business while I was with the Company. While I was away Mr. Satterfield was making them. We put the same ingredients in under both formulas. We used practically the case oils. I do not remember whether it was exactly the same quantities or not. We changed the quantities quite often, in any kind of syrup, sometimes we find a little less acid or something of that kind will make it better, we change most any time. The National Dope Company was incorporated, I think, in January, 1909. It was either '08 or '09, I cannot say positively. I never hunted up those dates on it. It was changed to the Birmingham Bottling Company, to the best of my recollection in January, 1911, and after that it operated as the Birmingham Bottling Company, and is operating yet as the Birmingham Bottling Company.

(Deposition of E. J. Smyly.)

Redirect Examination.

They stopped the boys at the ball park from calling Dope when Coca-Cola was sold out there. They used to call for it like base-ball people call for Dope, they would go out and sell it, the boys would go out and holler Dope, you know, and afterwards they made them holler Coca-Cola, call cold Coca-Cola. I could not say who stopped them. It was not me nor anyone connected with my concern. I had nothing to do with it.

Recross-examination.

We might have sold at the ball park a number of years ago but not since Mr. Johnson has had the contract with the Coca-Cola Company.

Deposition of J. L. Drake, for Defendants.

J. L. DRAKE.

Direct Examination.

Age thirty-one. Business soda dispenser with Nunnally Company, 318 Twentieth St., Birmingham, Alabama. Held that position about thirty days. I was with Nunally & Company before that on Nineteenth Street, in Birmingham. [1060] Soda dispenser there. Have been a soda dispenser for about ten years. I have dispensed Coca-Cola. That is the only one. I have heard of several other Cola drinks on the market, quite a few. Some of them are Rye-Ola, Gay-Ola, Cherro-Cola. If I had Coca-Cola in the fountain and Ry-Ola in the fountain together, not in the same container but in the same fountain and a customer should come in and

(Deposition of J. L. Drake.)

ask for a Dope, I would give him the one I made the most money out of, if he asked for a Dope. If he asked for Coca-Cola I would give him Coca-Cola. If he asked for a Dope and I served him with Rye-Ola, I would consider I gave him what he asked for. I would consider I was making more money and it would cost me less than the other product. I do not consider Dope specifies any particular drink. I have never termed it that way. The taste of the completed beverage Coca-Cola as dispensed to the public over the soda-fountain is not always the same. Sometimes the pressure in the water is not good, you do not get a good drink out of it, sometimes you get a barrel of Coca-Cola and it leaks and you get something on top of it and get something in there, bad water, something in there that makes it taste awful bad. Ice sometimes makes it sweater than at other times because you get a smaller amount of water and sometimes they are careless enough to put more syrup than should be in your ice, and you do not get the right amount of carbonated water to make a good drink.

Cross-examination.

I have always served Coca-Cola when Dope is called for. They have several slang words used for calling for these drinks. Some of them say Dope, some say Koke, some say—I don't know what all they don't say, and these slang words, whenever they used them, wherever I have been I served Coca-Cola.

Redirect Examination.

I handle root beer at our fountain. It is made

(Deposition of J. L. Drake.)

by the John Hungerford Smith Company. I have never dispensed any Hires' root beer. I was in stores where it was dispensed. Hires' root beer is extensively advertised. If they specify Hires' [1061] root beer, we have not got it, but if they just ask for root beer, if they do not specify Hires', we give what we serve. If I had two root beers, this root beer I now have and Hires' root beer, and a customer came in and said, give me a root beer, I would give him the cheaper article. I would consider I had given him what he asked for. There is no Coca-Cola advertising in any place, where I am working now. There never has been any there so far as I know.

Recross-examination.

I refer to this Atlanta Coca-Cola.

Deposition of Edward J. Ople, for Defendants.

EDWARD J. OPLE.

Direct Examination.

Age thirty-three. I live at 1112 Sylvian Avenue, Birmingham, Alabama. I have been living here since November 17, 1899. In telephone business. I occupy the position of clerk. I go into soda-fountains, or places where soft drinks are sold and ask for them. Cola drinks on the market are Cherro-Cola, Coca-Cola and several different bottled drinks. I am not familiar with the adopted name. I go into soda-fountains and drink those drinks. I usually walk into a soda-fountain or saloon and ask for a Dope. When I ask for a Dope, I expect to get most any of them. I mean by a Dope, several different

(Deposition of Edward J. Ople.)

bottled drinks, not a specific drink, what the substance of it is I cannot say. When I go into a soda-fountain and ask for a Dope, I do not consider that I am asking the dispenser specifically and definitely to serve me with Coca-Cola. In my opinion I would believe that the drinks that are bottled constitute a Dope, that is if served to me I would consider they are applying to what I call for, drinks of that kind. If I were served with Rye-Ola or Ali-Cola or anything of that sort, I would consider that I was getting what I asked for.

Cross-examination.

To the best of my recollection about eight or ten years I have been hearing the word Dope. I heard it in New Orleans, Atlanta, heard it in several outlying towns. I make the small country towns. It applies to soft drinks. I could not specify any particular drink it was applied to first, just speaking of the then bottled drinks of that sort, to the best of my recollection, [1062] was when Mr. Thomas and another gentleman who is here now, I just cannot recall his name, but I believe he is still in the bottling business around here, and I believe Mr. Gresham knows him, and he opened a place here on Morris Avenue, it was not Morris Avenue, it was the other side of the railroad, between Seventeenth and Eighteenth Street, they were stopping at that time, I was working at the Metropolitan Hotel as hotel clerk and they were staying with me, to the best of my recollection that was about the time the word Dope originated. Peak & Thomas was the firm

(Deposition of Edward J. Ople.)

name. That was the first I heard of Dope. I have heard of Coca-Cola practically ever since I have been knowing myself. I believe I knew Coca-Cola before I knew any of the bottled goods, before any of the drinks I have discussed. I do not remember back further than eight or ten years ago about the word Dope.

Deposition of C. N. Baker, for Defendants.

C. N. BAKER.

Direct Examination.

Age seventy-seven years. Live here in Newman, Georgia. Lived here fifteen or sixteen years. Engaged in bottling business, engaged in that business nearly ever since I have been here. When we first began to bottle, we did not bottle anything then but what we called soda water, lemon, strawberry and creme. Since then I could not name all the different colas I have bottled. I bottled the drink I got from Mr. Mayfield called Koke, Mr. Jim Mayfield there. (Indicating Mr. J. C. Mayfield.) I do not recollect now where we got the syrup from. I think we bought it from Nashville or Birmingham *one*. We put that up in seven-ounce bottles, six and seven ounce bottles. The name of that drink was Koke—K-o-k-e. We put a label on the bottle, Koke. I think Mr. Mayfield sent the label when he sent the syrup. The syrup came to me in kegs, or half barrels, I do not know which now. The containers of all the Colas I ever received were red. I first bottled along something in 1900 and something. It was

(Deposition of C. N. Baker.)

a good while ago. It has been some eight or nine years, I reckon. Since then I have bottled Cola-Queen, I called it, and Mi-Coca and Coca-Nola, Rye-Ola, and I [1063] —I don't know how many, every drummer that come along I had to take at least a trial package. The syrups for all these different drinks came in barrels and kegs. They were painted red. There is not but very little difference in all these Cola drinks in taste and color, if any. It takes a mighty close expert to tell the difference. I have a boy who can tell the difference, if there is any, but he does not do nothing but mix and bottle and of course he knows when he gets hold of them. There is no difference in the bottles of these different drinks any way except the name blown in them. The names the purchasers who want to buy a bottle of this stuff, use in asking for it, some will call for a cola, some for a Dope. I have sold a many a one for Dope. I reckon I have sold a fourth of what I put up for Dope and they got to calling it Dope until the Coca-Cola Company got to advertising it on everything, you know, to call it straight Coca-Cola. On this Dope question, you know, they would fool them in it and they are advertising, you will find it now, I expect, around town here where they advertised to call it by name, straight Coca-Cola. About half the men come in now in our town, and get to where they don't hardly call for anything, they go into the box and case and look like that, and get what they want and pull the stopper off and drink it. I tell my customers around town they don't need to have a

(Deposition of C. N. Baker.)

clerk, to set it out, but all the men could wait on themselves, but of course when I don't know that you call for anything, well if you come in and ask for a Dope it don't make any difference what you have, you give it to him, I do, always did. I never had anyone reject what I gave him on the ground it was not what he asked for.

Cross-examination.

This product Koke from Mr. Mayfield come by freight, I reckon. Sometimes they sent it on this West Point Route, sometimes on the Central. Mr. Mayfield sent me some labels, my recollection is they were that broad, as your two fingers. It went about half way around the bottle, a six ounce bottle. I do not recollect any label or shipping tag on the barrel. I guess there was, I do not recollect though. I do not know how that name of [1064] Koke was printed. It was K-o-k-e. That is all I recollect.

Deposition of Thomas C. Banks, for Defendants.

THOMAS C. BANKS.

Direct Examination.

Age, 66. Live in Newman, Georgia. I have lived here three years last October. Before I came here I lived in Atlanta. Engaged in the Railway Mail Service, been in that business 29 years. I have lived in Atlanta for twenty-five years, twenty-five—twenty-six years. I knew E. H. Bloodworth. He is my father-in-law. I went to Atlanta before he did. He came there, I think, in '87, perhaps, or '88. He went to live with me, he lived and occupied the same

(Deposition of Thomas C. Banks.)

house at 8 Woodward Avenue. We lived practically together most of the time. He came there to go into business with Mr. Mayfield, Mayfield & Pemberton, in the medicine business. He came there, it must have been in mid-winter, December or January, I do not recall the date or day. He went in business with them. They were making Coca-Cola, Koke, Stillinger, a blood medicine, and lemon and orange elixir, mustang liniment, queen hair dye and globe flower cough syrup. I recall those. Well, perhaps something else, I have forgotten about. They were making Wine of Koka, putting it up in quart bottles. They formed this partnership, these four parties, the latter part of '87, I think. This product Coca-Cola was a drink, prepared, a soda-fountain drink, color of it was a dark mahogany, you might say, dark color, not black, but brown, dark color. It tasted like the Coca-Cola you get now, practically the same taste. I had occasion to go down to the places of these people frequently, occasionally. Pemberton Medicine Company is what it was. The Pemberton Medicine Company, that is the beginning of it, they may have changed it afterwards. They did not make Coca-Cola very long. I often went down to the place of business during the time they were making that. They were selling it, shipping it around and selling it to soda-fountains. They put it in small kegs and jugs that I saw. The kegs were painted red. The kegs were marked Coca-Cola, in comparatively large letters. After that I think they commenced making a similar preparation called Koke.

(Deposition of Thomas C. Banks.)

That was after they had been in business [1065] for a little while. If there was any difference between this preparation they called Koke and the preparation called Coca-Cola, I could not tell it from drinking it and looking at it. It appeared to be the same. It was supposed to be practically the same product, I think, under different name. The reason they changed the name, I think, was Coca-Cola was little known then and I think Koke was a kind of new coined word with them, they changed because it was more attractive and shorter. I talked to my father-in-law, talked about the new word, the new drink Koke and so on, the new name for it, in other words that they did have some trouble with Dr. Pemberton, I think he was away a good deal and sick, in bad health. Mr. A. O. Murphy lived in Atlanta then, out on Washington Street, just diagonally across the street from me, only a short distance, less than one hundred yards. He did not stay in that partnership long. He left there, it seems to me, during late summer. I do not know exactly what time during late summer. He left there permanently, went back to Barnesville. Mr. Mayfield and Mr. Bloodworth continued the business. They continued to make the same product called Koke. They continued to label it just like they had done before. I cannot recall the time of the year when Dr. Pemberton died. He died later on, that is after Murphy had left there, perhaps in the Fall. Mr. Bloodworth and Mr. Mayfield, after Dr. Pemberton's death, divided the business, I think, divided

(Deposition of Thomas C. Banks.)

with Mrs. Pemberton, that is they gave her one-third of the manufactured products and all those kind of things and she took them, she took charge of them. They gave her Wine of Koka and various things, I think. I do not know exactly what they gave her, whatever they had on hand, manufactured stock, the manufactured goods. She took them away from there and had them stored at Candler's drug-store, I think, at the time, or they had them stored for her. By "they" I mean Mr. Mayfield and Mr. Bloodworth, they had it in charge. Mr. Mayfield and Mr. Bloodworth after that continued the business. Continued the manufacture **[1066]** of proprietary medicines and so on. They continued to make Koke. I don't know when they ceased, they kept on making it, I think. Mr. Bloodworth continued to be connected with Mr. Mayfield in that business until 1888, perhaps later. He sold out. I do not remember when he left there. It was later than that, perhaps a year, the last of 1887 or the first of 1888 that he began to do business with them and when he left there I cannot recall that date. They were doing business when this partnership, Pemberton Medicine Company, started up, out on Pryor Street. They eventually moved to a little residence cottage on Trinity Avenue. They must have stayed on South Pryor, or Pryor Street before they moved to Trinity Avenue, nearly a year. After they moved on to Trinity Avenue, Mr. Bloodworth was still connected with Mr. Mayfield in this business. They still continued to make Koke on Trinity Avenue. They made the same

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preparations as they did at the other place. I remember the instance of Mr. Bloodworth and Mr. Mayfield dissolving partnership, it must have been something like a year after that or more. Mr. Bloodworth left Atlanta, I cannot say now about the year, those things have been a good while ago. He left there after he went out of business with Mr. Mayfield but I cannot recall the date. When Mr. Bloodworth and Mr. Mayfield dissolved partnership, Mr. Mayfield kept this Koke product. Mr. Bloodworth sold out to Mr. Mayfield. That word Koke prior to that time had never been applied to a soft drink, that I ever heard of. As a word I had never heard it, a new word, I think it was. It seemed to be a kind of new uncomplicated and short catchy word. I had never heard it before. When the partnership was first formed, I was down there from time to time. I was down there on the occasion of their bringing machinery and stuff to start business with. I cannot say where they got it from, I do not remember now. I remember they were fixing it up. In fixing this product called Coca-Cola and then Koke, they used copper boilers, probably ten or fifteen gallons, something like that. They used a tank, a wooden [1067] tank, to make the Wine of Koka. Mr. Mayfield, I think it was, that actually mixed the syrup, this Coca-Cola, and later this Koke syrup. He learned from old Dr. Pemberton, I suppose he was there to instruct him. I cannot say I ever saw the contract of partnership. I heard them discuss it and all, but so far as reading the contract I cannot

(Deposition of Thomas C. Banks.)

say I ever read it. Do you remember what they said was in the contract?

Mr. HIRSCH.—I object to the foregoing question because it calls for hearsay testimony and any answer to it is hearsay evidence and I move to strike same.

Objection overruled and appeal prayed and granted.

They came in possession of all those formulas, for all those different drinks and proprietary medicines, in possession of all of them.

Mr. HIRSCH.—I object to the answer on the ground that it is merely hearsay and move that it be stricken out.

Objection overruled and appeal prayed and granted.

Cross-examination.

The latter part of the year '87 and the year '88 I was in the Railway Mail Service in and out of Atlanta. The last part of '87, and during the entire year '88, that is the time I am testifying about here. Part of the time I was located in Atlanta in the superintendent's office. I lived there. Mr. Bloodworth was my father in law. I saw them making Coca-Cola myself. I saw the labels Coca-cola. That was in 1888, along in the spring time, summer. The labels on the kegs were about the size of that (indicating), and the letters were a kind of block letters, Coca-Cola in block letters. There was a hiatus between Koke and Coca-Cola. The color of the printing was black. Coca-Cola was in black. The label was

(Deposition of Thomas C. Banks.)

painted on the kegs, I believe. The jugs, I think it was a paper label, it must have been that long (indicating as long as the witness' hand). I do not remember what else was on the kegs. I do not think there was any name of the manufacturer. I think the name Pemberton Medicine Company was on the label. Coca-Cola was in block type and printed in black. I think it was the Pemberton Medicine Company, that is my best recollection. They had stationery or letter-heads. **[1068]** I do not remember that it was on there. The names of some of the medicines and so on, and et cetera—it had et cetera on the end of it. They had several medicines and et cetera, they did not have all of them, they had quite a number. Which ones I do not remember. They adopted that name of Koke, my father in law told me so.

Mr. HIRSCH.—I object to that part of the evidence which refers to the adoption of the name of Koke on the ground that it is hearsay testimony and move that it all be stricken out.

Objection overruled and appeal prayed and granted.

This Koke was printed, I think, in black, on the kegs. It was in jugs, too. They had a label on the jugs, a paper label, about the size of your hand, two inches wide, something like that. I first saw the change from Coca-Cola to Koke during the summer sometime or spring-time. I cannot recall the exact time, but after they had been in business for some

(Deposition of Thomas C. Banks.)

time. My father in law told me about this trouble with Dr. Pemberton.

Mr. HIRSCH.—I move to strike that part out on the ground that it is hearsay, the part of the evidence where his father in law told him about the trouble with Dr. Pemberton.

Objection overruled and appeal prayed and granted.

My father in law told me about the adoption of this new and novel trade name.

Mr. HIRSCH.—I move to strike that out on the ground that it is hearsay testimony.

Objection overruled and appeal prayed and granted.

I would never have known it any other way. I saw them every day, nearly and they told me.

Mr. HIRSCH.—I move to strike that out.

Objection overruled and appeal prayed and granted.

Mr. Bloodworth and Mr. Murphy. I saw almost every day. I am talking about what my father in law and Mr. Murphy told me.

Mr. HIRSCH.—I move to strike all that out on the ground it is hearsay and incompetent evidence.

Objection overruled and appeal prayed and granted.

Mr. Bloodworth told me Mrs. Pemberton took one-third of the manufactured products and stored it in Mr. Candler's Drug Store.

Mr. HIRSCH.—I move to strike all evidence pertaining to that out on the ground that it is hearsay

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and therefore incompetent evidence.

Objection overruled and appeal prayed and granted.

I know about the [1069] *about the* name of a drink they were getting out then called Yum-Yum. I saw that down there. I saw labels for that, I think. That was along about that time in the spring, leading up to the summer-time. I think the name Koke was on the Pemberton Company's stationery. They formed the partnership about the last of 1887, in the winter-time. Mr. Mayfield stayed in Atlanta quite awhile after Mr. Bloodworth sold out to him. I went to his place of business after my father in law sold out. He was manufacturing the same thing they were, making up the same proprietary medicines, he was, the drinks and so on. My father in law sold out about 1888. After that Mr. Mayfield stayed in Atlanta two or three years. He still continued the business in the place on Trinity Avenue, and the same products, wine of Coka and Koke, Indian Queen Hair Dye, lemon and orange elixir, and he had a medicine called Gingerene, Globe Flower Cough Syrup. I think he continued under the same name of Pemberton Medicine Company. I know nothing to the contrary. After Mr. Mayfield left Atlanta he went to Birmingham, I think. I saw very little of him then. I do not know whether he commenced manufacturing any other drinks or not, besides those I have mentioned. I do not know where he got these labels from and this stationery. They never stopped using this name Coca-Cola, that I know of, that is, any time, of

(Deposition of Thomas C. Banks.)

the time my father in law was in business. They made Coca-Cola and Koke both at the same time, and they finally ceased making Coca-Cola, I think they did, ceased making Coca-Cola and called it all Koke, but they made Coca-Cola and Koke at the same time, during the same period; it was the same stuff so far as I know, in appearance and taste and everything, it was the same. I do not know when they stopped using the name Coca-Cola, but I think they did stop using the name Coca-Cola. I won't say whether they stopped while my father in law was in business or not. They continued all the time that he was in business. I do not know why they quit using the name, if they did quit. I do not know that they ever quit. They made **[1070]** Coca-Cola and Koke both. The Coca-Cola now made in Atlanta, that is what I refer to. I do not know of any place where they shipped this product Koke to. They sold it around promiscuously. They sold it to soda-fountains. I do not know who they sold it to, I cannot recall the names. It was shipped out of Atlanta; I do not know where they shipped it to, but I know they shipped it. My father in law never did any manufacturing at all after the dissolution of the partnership. He just quit the business; Mr. Mayfield took the whole business, brands and everything, and went on with them. I do not know much about the controversy that the Pemberton Medicine Company and my father in law had with some eastern concern about Wine of Coka. They had some controversy with some party about orange and lemon

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elixir, about the name, I think. I cannot say what the outcome of that controversy was. As I recall, there was some dispute about the name. It was during 1888, I think. I could not tell more about the stationery of the Pemberton Medicine Company. I do not remember much about it. It never had Coca-Cola on it, to the best of my recollection. Just some of the other names, several of those medicines and so on, and others were not, but there was an et cetera. To the best of my recollection it had Koke on it.

Redirect Examination.

Mr. HIRSCH.—I wish to enter a final objection to all the evidence that the witness said some one, or any of it that he said some one told him or any evidence that he designates the person that told hi mas being hearsay and incompetent evidence and move that it all be stricken; and further that the supposition concerning the adoption of the name and the mixing of the preparation is a conclusion of the witness and not testimony and move that it be stricken as not being competent evidence.

Objection overruled and appeal prayed and granted.

After this Pemberton Medicine Company began to use the name Koke down there, the first time you actually heard the name Koke, how did the name strike you, as a name you had heard of before? I had never heard the name before.

Mr. HIRSCH.—That is objected to as a conclusion [1071] and therefore incompetent and I move to strike the same.

(Deposition of Thomas C. Banks.)

Objection overruled and appeal prayed and granted.

Q. 209. Now, was that a fact, that the name was new and short and all that, did someone have to tell you that, or is that the way the name impressed you?

A. It impressed me as being the first time I ever heard it.

Mr. HIRSCH.—I object to the question as leading and move it be stricken out.

Objection overruled and appeal prayed and granted.

In this house with me besides Mr. Bloodworth was his daughter Marian Bloodworth part of the time, and Mrs. Shelverton a part of the time.

Recross-examination.

Candler's drug store was the store of Asa G. Candler. A third of the manufactured products which they agreed to give her were stored in there, one-third of whatever they had on hand. I was not in the soda-water business in any shape or form, and never have been interested in it, or manufacturing soft drinks. I have never even run a moonshine still.

Redirect Examination.

Mr. Murphy died six years ago, I think; I am poor on recalling dates, about six years ago.

Deposition of R. A. Thorn, for Defendants.

R. A. THORN, a witness on behalf of the defendants.

Direct Examination.

Age, forty-one; live in Meridian, Mississippi, engaged in drug business. I have a drug-store. I have a fountain in connection with that drug-store. I have had that drug-store in Meridian about eight years. I dispense all of the different drinks, lemon, orange, vanilla, Coca-Cola, Dope and Koke syrups. I get this Dope syrup and this Koke syrup from the Southern Koke Company, New Orleans. Other Cola drinks I have handled are Co-nut, Coca-Cola and Afri-Cola. Recently a Coca-Cola Company's representative called at my drug-store, something like a month or six weeks ago, I don't remember the exact date, Mr. Leigh called. Mr. Leigh was registered at my hotel, the Union Hotel, and had been a guest of the hotel several times before. I always give him an order for Coca-Cola, either for present or future delivery. On this occasion he came in the drug-store, I was standing behind the soda-fountain. He said let me see you a [1072] minute. He walked on back behind the prescription case. I followed him, and he thumped a Coca-Cola barrel and said you will need a barrel before I get back. I said probably so, I expect you had better put me down a barrel, to be on hand when I do, and he looked around and there was a barrel of Dope syrup standing near. He said, "What is that you have got," and I said, "Dope." He said, "What is that." I said, "It is

(Deposition of R. A. Thorn.)

a Cola drink." He said, "What sort of drink?" I said, "It is something like Coca-Cola." He said, "What are you doing with that damned rotten stuff in your place of business?" I said, "That is good stuff, and I will give you a drink of it; I think you will like it." He said no, he did not want it. And he said, "Any damned man that will handle that rotten stuff and let it come into his place of business would steal." I said, "Hold on, Mr. Leigh, you are going a little bit too far." I said, "Don't accuse me of that." Well, he repeated his words, and I said, "Now, I don't have to steal, I never have stolen, and I do not steal from anybody," and I said furthermore, that any man says I steal, tells a God damned lie." Well, he made a pass at me to strike me and struck me a glancing lick beside the face and I struck him just over the left eye there with this hand and broke that finger, dislocated this knuckle. Well, we fought around behind the prescription case there; I don't know how long, but in the scramble we went on out through the front of the store, each one striking the other and out on to the sidewalk. We were having a considerable tussle. A man jumped out of a buggy from the street and run in between us and separated us. I left off part of the conversation behind the prescription case. He said, "I will take my name off your hotel register and never come inside of the hotel again." That was before he accused me of stealing. I said, "That is your pleasure to do and your privilege, if you feel like you want to do that." The idea with me was to try to keep his

(Deposition of R. A. Thorn.)

friendship. He was a guest of my own hotel. He had been there, I think, that was his third trip, probably the fourth trip at the hotel. I had done my business and kept on friendly **[1073]** terms with him and I would not let myself get huffy with him until he had accused me of stealing in the conversation. Then I got mad and made a very rough remark as just stated, and he struck my face. He said he would take his name off the register because I handled Dope syrup.

Cross-examination.

This Dope and Koke syrup is not two syrups, it is one, according to my understanding. I have been handling it, I suppose, six or seven months. The first I heard of it was the representative of the Southern Koke Company of New Orleans, who brought a sample there and sold me a half barrel. That was six or seven months ago. That was when I first heard of it. When that representative of the Southern Koke Company came to me he said I have a Cola syrup, I want to get you to try it. He had a bottle of it, and we went from the hotel lobby up to the store and made a couple of glasses of the drink and he drank one and I drank the other. There was quite a conversation before I agreed to buy. We talked about the syrup and several customers standing around drank the syrup and they all seemed to like it, and I thought it was very good. I think there was some remark made about it being on the same order as Coca-Cola. This syrup is billed one dollar and a quarter a gallon, with twenty-five cents

(Deposition of R. A. Thorn.)

taken off, if paid within thirty days, a dollar a gallon. I think in some stipulated time they would issue me stock for the amount of syrup bought. I thought so little of that, that I did not charge my memory with it. That stock would be issued to me, that was the idea. I bought it on the merits of the syrup more than on the promise of the stock. I got it cheaper than Coca-Cola. I handled Konut about a year. I handled some Konut syrup up to the time I bought the first Dope syrup. I handled Gay-Ola before I handled the Konut syrup, and some of it along the same time. There was a while I handled Konut and Gay-Ola at the same time. I handled this Gay-Ola probably a year. Afri-Cola is an extract drink. I put simple syrup with that to sell it. That was the first I handled. I have been dispensing Coca-Cola ever since [1074] it was brought into the State, I think, about 24 years ago. I am handling Coca-Cola now. When I was handling Coca-Cola and before I handled this Konut, Gay-Ola or Afri-Cola, when a man came into my place of business and asked for a Dope or a Koke we gave Coca-Cola. I thought he meant Coca-Cola, because that was the only thing that was handled at that time, as Dope. It goes back twelve or fifteen years ago. That gentleman's name was spelled Mr. Leigh—L-e-i-g-h, to the best of my memory. I know it was a Coca-Cola representative, because I am not sure he took the order, but I was in the act of giving him an order for a barrel of Coca-Cola when the conversation started. He had been around before. That was not his first trip, he had

(Deposition of R. A. Thorn.)
been there three or four times. This was a young, slender man, did not appear to be over 25 or 26 years of age; other Coca-Cola representatives are older and larger men. He had been at Meridian three or four times before that. In keeping these syrups, Coca-Cola, Dope and Koke, I keep them in separate containers. When a man comes in now and asks for a Dope or a Koke I give him out of the Dope or Koke container, the product of the Southern Koke Company, Limited, and every time a man comes in and asks for a Coca-Cola, I give it to him out of another container. I am behind the fountain myself, but very little. I try to make it my business to see always, when I am in there, and they understand the thing, I have instructed them and they always told me that they carried out the instructions. I told them when Dope was called for to serve the Dope syrup, and when Coca-Cola was called for to serve the Coca-Cola syrup. The Dope or Koke syrup is one syrup. If my instructions are carried out when a man comes in and asks for Coca-Cola and another man asks for Dope and another asks for Koke, there is no chance on earth of their getting them out of the same container, unless they willfully violate the instructions, and there is no probability of making a mistake, because they are kept on separate sides of the soda-fountain. I know where they are kept. The center one we will call "A," the first one to my left we will call "B," and the first one to my right we will call "C." I am the dispenser. "A" is hydrant water. "B" is carbonated water. "C" is

(Deposition of R. A. Thorn.)

carbonated water. The first plunger [1075] to your left, we will mark "D." I keep Coca-Cola in there. "E" Orange syrup, I think; "F" Chocolate; "G" Lemon. The first plunger to the right "H," Dope; "I" simple syrup; "J" vanilla, I think; "K" I have forgotten, some fruit syrup, though. I keep Coca-Cola in my first plunger to my left, and the Southern Koke Company product in the first plunger to my right. (The witness places the date and his signature upon the drawing.) This plunger "D" is marked Coca-Cola. "H" is marked Coffee.

Redirect Examination.

When customers come in and ask for Dope, I do not consider that they are making a definite and specific request on me to serve them with Coca-Cola exclusively. When I was handling Coca-Cola exclusively and they asked for Dope, I served them Coca-Cola, because that was the only Cola syrup I handled at the time. If I had had any other Cola syrup at that time and they asked for a Dope, I would have served them the first Cola syrup that was in reach of me, I guess, the one most convenient.

Recross-examination.

What I have just said applies to Koke just as well as it does to Dope. At that time it was the only Cola syrup known and the only cola syrup supposed to contain any drug or Dope, and I therefore thought they were specific requests for Coca-Cola.

Redirect Examination.

That was before I heard of these others, before

(Deposition of R. A. Thorn.)

any other Cola syrup was on the market around here, so far as I know.

Recross-examination.

I paid for Konut one dollar and a quarter a gallon, I think. I think it was billed at one dollar and a half and twenty-five cents rebate on it. I have forgotten what I paid for Gay-Ola. It was cheaper than Coca-Cola. Afri-Cola was a concentrated syrup that we mixed with simple syrup. Introduce sketch drawn by Dr. Thorn as Exhibit #17, to the testimony of Dr. Thorn, Complainant's Exhibit #17.

Deposition of H. F. Crisler, for Defendants.

H. F. CRISLER.

Direct Examination.

Age thirty-two. Live Jackson, Mississippi. Lived here twenty-four years. Engaged in drug business for three years. Corner Drug Store is the name of **[1076]** *of* my store. I have a soda-fountain in my drug-store. I have had it all the time I have been in business. I handle Coca-Cola and Dope. I get this Dope from New Orleans, the Southern Koke Company. I handled Konut. Customers come in and ask for a Coca-Cola if they want the genuine Coca-Cola, if they want some other Cola drink they ask for a Koke or Dope. I know I am giving them what they want, because that satisfied them, and if I serve them Coca-Cola it does not satisfy them. I have had customers come in and ask for a Dope and I served them with Coca-Cola and they would say it did not satisfy them, or reject it. It

(Deposition of H. F. Crisler.)

has occurred quite often, when we would be out of the Dope syrup and have to use Coca-Cola, quite often we would have complaints on the syrups, on the drink they were getting, almost invariably from the regular customers. I have heard the word Dope used quite a long while, almost ever since I have known Coca-Cola, for that matter. I have only had direct knowledge of there being other Cola drinks in the last three years, since I have been in the drink business, of course, prior to that time I bought Kokes and Dopes personally, but for ten or twelve years anyway. Before I went into business and went into the soda-fountain business and asked for a Dope or Koke I expected to get some Cola drink, other than Coca-Cola. When I wanted Coca-Cola I asked for Coca-Cola. A Coca-Cola representative came into my place of business recently, it was probably three months ago, I judge, that he was in there. It was in December when he was in our store. I do not think he is in this room now. I think he was black-headed, or dark hair. He was slightly slim, fairly full-faced, is my recollection. He was there when I went in, I believe I had been out to lunch. When I got there he was talking to the soda-men, soda dispensers. I do not remember his conversation with the soda-men, only they were very much disturbed when I came in, they told me, one followed me on back when I went to hang up my coat and said a Coca-Cola man had been in and [1077] threatened to prosecute them because they were serving a substitute for Coca-Cola and had

(Deposition of H. F. Crisler.)

them badly excited and disturbed. I cannot give the Coca-Cola representative's exact words because I did not make a note of it or anything that way. His attitude though was you might say, threatening towards me, in fact, he said if we served some substitute for Coca-Cola and continued to disappoint their customers when they called for a drink, that they would sooner or later put us out of business. He said that we did not have a right to sell anything but Coca-Cola. That they had the advertised drink and it was what everybody wanted no matter whether they came in and asked for a Koke or a Dope, that they really wanted Coca-Cola. I contended that when people asked for a Dope or a Koke I had as much right to serve them Dope as Coco-Cola, or even more right because there was a drink named Dope and we were serving that and they were satisfied and that was what they really wanted He said he was going to put the Dope people out of business, that they were selling a substitute for Coca-Cola and it was not legitimate—I do not know, his attitude was finally that the Southern Koke Company was doing a fraudulent business and we were too by handling their product. He said positively there was no trademark on the word Dope, that they were using it without any authority, that the government had never granted a trademark on the word Dope. He said the Koke Company's statements in their letter-heads that they did have them registered was not any truth in them at all, and about that time he and I both were inclined to

(Deposition of H. F. Crisler.)

be losing our temper and getting to talk pretty loud. Several customers came up to the fountain and I decided if we did not wind up, it seemed like we were going to have something more than words. I told him it was time for him to go and I did not want to have any more conversation with him. I escorted him to the door and told him he would have to go ahead. I did not want to fool with him, that we had Coca-Cola, and if I wanted it we did not have to buy from him, we could get it from whom we pleased **[1078]** and where we pleased. He had a contract and wrote up an order for a barrel of Coca-Cola. I did not read either one. I was not interested. I did not want the contract and did not want the barrel. I glanced over the contract. I did not read it carefully. He stated among other things that it was so we could get our discount and we would agree to handle nothing but Coca-Cola. He wanted me to sign a contract to handling nothing but Coca-Cola, that was my understanding of the conversation. I did not read the contract, I only glanced over it. He charged me with substituting. I do not consider that we had been substituting. When a man comes in and asks for a Dope or Koke we give him that and he was satisfied. I consider I was giving what he wanted. I never had anybody reject either this Koke or Dope when he asked for it on the ground that it was not what he wanted. I handle Coca-Cola and Dope both. These syrups came in a red barrel, except Coca-Cola. We have been buying from the drug-store, we bought in a five-

(Deposition of H. F. Crisler.)

gallon demijohn. The Coca-Cola barrels have labels on them and the Dope barrels have Dope stenciled on them. The only three syrups I ever handled were Konut, Dope and Coca-Cola. They all came in red barrels. This Dope Company is the Southern Koke Company, Limited, of New Orleans.

Cross-examination.

Substituting is offering a man something different from what he calls for when he knows what he wants when he calls for it. We have served him Dope and he is satisfied with that and when we have been out of Dope and had to use Coca-Cola exclusively, why he was not satisfied with it. We have had numbers and numbers of them say they did not care for the drink Coca-Cola, it was not satisfactory, or walk off, of course ordinarily a man would not say anything. He would say this is not what you have been serving me, and usually he did not say anything, just walked off and left the full glass, of course I would know he was not satisfied. When a man came in and paid a nickel for a drink and go off and leave it, you know he is not satisfied. If a man gets what he wants and is satisfied and comes back time and time again **[1079]** and asks for the same thing, and gets the same thing, and is well satisfied, it is pretty good evidence that is what he wanted. He keeps on asking for Dope and he seems satisfied—that would be the best way I could determine whether a man is satisfied or not, that he would continue to come back, and ask for the same thing and repeat the operation over and over again. I could not say how

(Deposition of H. F. Crisler.)

the word Dope came about, only from my own personal experience and how I have used it. I never used it in applying to Coca-Cola. When I wanted Coca-Cola I asked for Coca-Cola. I first commenced drinking these drinks I think almost ever since I have drank Coca-Cola, that has been probably ten or twelve years ago. I knew certain places I visited handled a drink different from Coca-Cola, a Cola drink different from Coca-Cola and I bought it and asked for Dope and I got what I wanted, and if I asked for Coca-Cola they usually gave me Coca-Cola. I do not remember the names of those drinks. This corner right here, you could ask for Dope and get a drink, it did not taste like Coca-Cola to me and was not Coca-Cola so far as I knew then. I have no idea the name of the drink, the only thing I know is that it was not Coca-Cola. I knew of Coca-Cola as a specific product like lemon phosphate and orange, but if I asked for Dope I got exactly what I wanted. I do not suppose I have served one hundred drinks in my life, the boys have instructions to serve Coca-Cola and keep Coca-Cola in one position and the other syrup in a different one, whatever we serve, in the other container, and if they ask for Coca-Cola, to give it to them and if they ask for Dope to give it to them. Vanilla and lemon are so entirely different there is no connection between them, but there is a connection between these two drinks, Dope and Coca-Cola, they have the same general appearance and taste. I am sure the average customer could tell the difference in the

(Deposition of H. F. Crisler.)

taste, I know they do tell the difference at our fountain. I know on one or two occasions we have been out of Dope and when we had to serve them Coca-Cola they were not satisfied with it and that is the only criterion, you might say, we have to go [1080] by. I have served Coca-Cola and no other one of these drinks and dissatisfaction arose then. Plenty of people come in and want Coca-Cola and do not want anything else. I do not know that they knew about the other syrups that I had, only they had been coming in and drinking Dope and when they got Coca-Cola they were not satisfied with it. I always give the other fellow the same allowance, or argument, when I want Coca-Cola I ask for it and when I want Dope I ask for it. I think nine-tenths of the customers know I handle the different products from Coca-Cola, because when we had to serve Coca-Cola none of them were satisfied. They come there to my place and we had every reason to believe that the other places were not serving anything but Coca-Cola and they said that ours was better and what they wanted. If anyone comes in and asks for a Dope and got what he wanted and was satisfied, that convinces me that he knows that he is getting something different from Coca-Cola. I cannot read another man's mind, and I cannot tell you except from his action as to what he believes he gets there. He might possibly think it was Coca-Cola that he was drinking with a relish, instead of Dope. Of course, those things are possible, this man might follow out your same course of reason-

(Deposition of H. F. Crisler.)

ing, and go into two or three other places and ask for Coca-Cola and get a drink that tasted like Coca-Cola and he had every reason to believe it was Coca-Cola and then come back to our place and ask for Dope; that automatically shows that he knew he was getting some drink different from Coca-Cola and that satisfied him. Carbonation makes some difference in the taste of the drink. He might have thought our product was being handled better, that we took care of our customers better; he might have arrived at that conclusion, that is possible, but not at all probable. My line of reasoning, if a man comes in day after day and asks for Dope and gets a drink that satisfies him and comes back and repeats the operation over, maybe three or four times a day, and he knows he is getting what he wants and is pleased with Dope, he **[1081]** knows the specific product he is getting. He asks for Dope and he gets it. We have handled Dope and Konut ever since we went into business. The product of the Southern Koke Company we have handled about a year, I guess. Prior to that time, we carried the Konut syrup. I do not think I have ever been without Coca-Cola. Before we carried this product of the Southern Koke Company, and a man eames into our store and asked for a Dope, we gave him Konut. There is very little difference between the taste of Konut and Dope. Mr. Young, the salesman from the Southern Koke Company, had been traveling for the Konut people and he got me to use the Dope, in fact up to that time I did not know there was a

(Deposition of H. F. Crisler.)

product copyrighted as Dope. He just had been traveling for the Konut people prior to that time and we had always been giving him the orders regularly, and about two or three every month, and he said he could fill our orders now from the Southern Koke people and that he would guarantee the syrup to be as satisfactory. He told me that that name Dope was copyrighted. He did not tell me I could not sell Konut when Dope was called for, at that time. He discussed that after a while, not at that time, that the customers were entitled to get the copyrighted product when they called for Dope. I had heard long before I heard of this product of the Southern Koke Company, of the term Dope. I judge it applies to this product of the Southern Koke Company exclusively, in a legal sense but prior to the time I had heard of it, I just considered it was a drink that was different from Coca-Cola. I have heard of Dope almost ever since I heard of Coca-Cola. There were other drinks of the same kind at the time I heard of Coca-Cola, similar to Coca-Cola. I do not remember the names of those at all. I did not have occasion to do the buying for any concern serving any of these drinks. Coca-Cola is well advertised around here. I have no advertising in my store at all. I may have had advertising of it at some time, a good while ago. I do not remember that I ever had anything except some—perhaps some little thing the advertising man dropped in and left in the summer. I never sent to the house for any advertising matter. I never had painted or

(Deposition of H. F. Crisler.)

printed signs **[1082]** around, or globes, anything like that. I think we had some fans and maybe, you know a traveling man would drop in and leave those things at the fountain, quite often you know, but I did not pay any attention. I know there was some trays and some fans. I do not remember of anything else, there might have been something else because I did not serve the drinks at the fountain, I did not have occasion to come in contact with them. I am at the cash stand quite a good deal, directly across from the soda-fountain and watch the trade pretty close. If a man comes into our place of business and asks for a Coca-Cola, another man comes in and asks for a Dope and a third man comes in and asks for a Koke, the soda-man is supposed to give the men just what they call for, and that is customary in the store. If he knew the man asking for Coca-Cola wanted Dope, that he had been trading at the store before and knew that he wanted Dope, he would draw them out of the same container. He will know from past experience that he wanted Dope, and we give Dope and he is satisfied. I do not think that is substitution. It may be legally substitution. The reason it is not substitution is that because before I have served them with Dope syrup and he has liked it and I do not think that is substitution and he apparently liked it and does not kick. Coca-Cola is supposed to be made in Atlanta, Georgia. I mean the one that is advertised, ask for Genuine Coca-Cola if you want it. "Ask for the genuine if you want it, nicknames

(Deposition of H. F. Crisler.)

encourage substitution." I have seen that advertisement. It naturally wants you to demand Coca-Cola irrespective of what you might want. I suppose they are referring to any Cola product. I judge that they have reference to Dope and Koke. I have heard of this product that is named Koke almost since I have Coca-Cola, Koke and Dope, don't know definitely. I was connected with the Jackson Loan & Trades Company. It was a building and loan association. We had trouble with the Federal Authorities, and were put out of business, for the mis-use of mails and the business was wound up. They took action against me personally. The [1083] Government's contention was found to be right. I was sentenced.

Redirect Examination.

I was secretary and treasurer of the Jackson Loan & Trust Company. It was a building and loan association and we had an agent that operated in Oklahoma and he did a good many things that were irregular and he was indicted by the grand jury in Oklahoma and we, as officers of the company, were naturally responsible for his actions; or rather we were termed to be responsible for his actions by the Government, indicted jointly with him and had to stand prosecution for his offenses as well as he did. I did not know anything about the irregular conduct that he was doing until probably six months after it was done, the Government did not take it that we were relieved because of our relations and

(Deposition of H. F. Crisler.)

not keeping up close with him. He was the agent of the company and I was secretary of the company and the Government held that it was my duty to look after it.

Recross-examination.

The crime charged in the indictment was fraudulent use of the mails. I stood trial. The agent, I and the president of the company were all sentenced to fines and imprisonment in the county jail here. I paid the fine and served the sentence in Guthrie, Oklahoma. Dope was stenciled on the barrels we got from the Southern Koke Company. I do not remember a label there. I think it had the name of the company *is* one form. I do not remember whether it had Koke on it. I never paid any attention. I do not think so. It just had one word stenciled and from the Southern Koke Company, New Orleans. The only ones I have gotten always had the labels pasted on it and Koke had it stenciled with black ink, black paint on the barrel.

Deposition of H. M. Todd, for Defendants.

H. M. TODD, a witness on behalf of the defendants.

Direct Examination.

Age twenty-seven. Live 223 E. Capital Street, Jackson, Mississippi. Lived here all my life. Engaged in drug-business. Name of my drug-store, Todd's Drug Store, 204 West Capitol St. Owned that store since the fourth of March, 1913. I am about the fountain myself frequently so that I can

(Deposition of H. M. Todd.)

hear the names customers use in asking [1084] for drinks they want. I have a soda-fountain in our drug-store. We dispense just one Cola drink, Konut, out at Atlanta. The fellow I bought out used it and I continued using it. Mr. Clark who was traveling for them quit the Konut people and started in business for himself and went to manufacturing a Dope of his own, Miss-Ola, I believe. I used one barrel of it which did not give us satisfaction and we quit, and we started using a preparation put out by the Southern Koke Company, called Koke. Our customers in asking for these Cola drinks ask for Dope and Koke. I give them Dope, all we have got. I mean by Dope this New Orleans product, of the Southern Koke Company. Before I began to handle that when they asked for Dope or Koke I gave them Konut. When our customers asked for Dope or Koke and I served them either Dope or Koke made by the Southern Koke Company of New Orleans, in a way I considered I was giving them what they asked for, something on the same order as Dope. We never had any customers turn it down and reject it when served to them in response to call for Dope or Koke on the ground that it was not what they asked for. We have had them to send back Coca-Cola and ask for Dope. At times we have run out of Dope and sent out and bought Coca-Cola from somebody in town. When we have not got Coca-Cola in our house and the customers come in and ask for Coca-Cola we tell them we have not got Coca-Cola. I had a call on

(Deposition of H. M. Todd.)

me from a representative of the Coca-Cola Company within the last four months, I think it is. He came into the store, I was out at the time. I knew he was in town. He went up to my brother and asked for Coca-Cola and he told him he did not have Coca-Cola. He said, I can give you a Dope. So he never said anything and he told him, I think my brother went on and served it anyway and he took a drink of it and said this is not Coca-Cola. My brother said, "I told you it is not Coca-Cola, we don't handle Coca-Cola." He went back in the back of the store and there was a barrel of Coca-Cola back there at the time, I expect there was about ten gallons in it. He told him then that we did not serve Coca-Cola. He went back and **[1085]** *and* looked at the barrel and saw what it was, that there was a Southern Koke Company's barrel and he said you had better give me an order for a barrel. I said we will sell out what we have. He came to the front telling me about people around the country that they were going to fight. I told him they will not get after me because I don't handle it. I guess he meant the Coca-Cola people were getting after those parties who handled Dope and Koke. He said he could give us some trouble if he wanted. I told him all right to go ahead and give me all the trouble he wanted. I have not bought but one barrel of Coca-Cola from the Coca-Cola people in two years. I know that he was a Coca-Cola representative because he took an order for a barrel of Coca-Cola on a Coca-Cola order blank and he had been distributing advertising mat-

(Deposition of H. M. Todd.)

ter for Coca-Cola at the time. He told me then if they come in and asked for Coca-Cola—I told him that we told them that we did not have Coca-Cola, but we had Dope. He wanted to know if I did not want to handle Coca-Cola. I told him no. I guess we sold last summer right here on the corner two barrels of Konut in one month, and they handled it and there was a soda-dispenser there that witnessed everything. He stated to me, but he is not here. He is working at Greenwood, Mississippi, you can get good dope out of him if you can get him. His name is John Gayden, he works for some fellow in Greenwood, I cannot think of his name, although it begins with a "W," a drug-store.

Cross-examination.

Up to a couple of days ago I have not had any Coca-Cola in our place for over a year. If a man came in there on February 23d I told him I did not have Coca-Cola. Mr. Ford, right here on the corner, run under the name of Brown at that time he was out of Coca-Cola and sent out and asked if I had Coca-Cola. I told him no, I said I have got Konut. He said all right, let me have that. I sold him about two barrels. I never handled Coca-Cola regularly since I have been in business, except as I sent out and bought it. Before I went in this drug business I was night [1086] clerk on the corner down here, the drug-store. I was night clerk on the corner a year. I have been in the drug business all my life. I have had places where they handled Coca-Cola regularly. Every place I have been to they handled

(Deposition of H. M. Todd.)

something else like Coca-Cola. "B" is plain water, "A" and "C" are carbonated water, right in the center of the fountain. "D" the first on the left is vanilla. "E" pineapple; "F" orange; "G" lemon; "H" strawberry; "I," I do not think there is anything there. On your right "J" Dope; "K," I believe is chocolate; "L" plain syrup; "M," nothing; "N," nothing; "O" broken, then there is nothing in "M," "N" or "O." That is the arrangement I have had ever since I have been out there. When I have Coca-Cola I put it in the same tank I have Dope, in "J." I do not think there is any label on it. There may be some label on it, I do not know, I didn't notice it. I have heard of these terms Dope and Koke about six or seven years. They apply to Coca-Cola to some extent. They impressed the customers who generally come in and called for Coca-Cola, so much, just like anything else, a nickname, Koke and Dope. I first heard these terms Koke and Dope just after Coca-Cola came out and when people come in and asked for Koke or Dope, as nicknames for Coca-Cola. Offer diagram in evidence as Complainant's Exhibit #18.

Deposition of Robert E. Ousley, for Defendants.

ROBERT E. OUSLEY.

Direct Examination.

Age thirty-five. Live Kosciusko, Mississippi; lived there five years; engaged in retail drug business I have a soda-fountain in my drug-store. I have had that drug-store since November, 1910, that

(Deposition of Robert E. Ousley.)

is half interest in it. During the absence of the men —I mean the soda dispensers, I am about the fountain and hear the name customers use in asking for drinks. We are dispensing Coca-Cola and we have one called Koke and Dope. Koke and Dope is shipped from New Orleans from the Southern Koke Company, Limited. I have dispensed Konut syrup, it is a cola drink. During this year the Coca-Cola man left us a sufficient supply of advertising in the last few months, but prior to that time he [1087] would not leave us anything at all, he did not give us any trays, pencils or anything. He claimed we were handling Konut syrup, and said we were not entitled to them when we were selling Coca-Cola all the time on calls for Coca-Cola. He claimed there was only one place in town that sold pure Coca-Cola. He wrote all over the windows and sidewalks that we did not handle Coca-Cola and he would not give us any advertising matter because we would not sell pure Coca-Cola, it was their regular advertising agent. Another representative of the Coca-Cola Company came in later, I think he said Pierce, if I remember right. I think that gentleman over there was the one that called at my prescription department. (Pointing to Mr. H. B. Pierce.) It was as an attorney of the Coca-Cola Company. He told me he had jumped all the way from Oklahoma down especially to see us, that we were charged with—that is we were using Konut syrup at our fountain as a substitute for Coca-Cola. I never did deny the charge of using Konut syrup at the fountain, but

(Deposition of Robert E. Ousley.)

as substituting for Coca-Cola we always have Coca-Cola in the house and my instructions to the dispensers for both preparations we have at the fountain to give Coca-Cola when Coca-Cola is called for, and when they say Koke or Dope, I instruct them to give a cola drink, and he told me he had traced a shipment of Konut syrup up from Atlanta, from the time it was shipped there until it reached our depot and had pictures of my loading it on the wagon and where it reached my place of business where it was unloaded at. I did not deny that party, and I do not deny it now. He presented me with a contract or agreement, whichever you might call it. It was typewritten, if I remember right. It provided that we would discontinue handling Konut syrup or anything, that we would have Coca-Cola to serve on every call for Coca-Cola, which I discontinued from the time he was there of selling Konut syrup. He seemed, the way he looked at it, he seemed to think that all of the business for Cola drinks belonged to the Coca-Cola Company, for Cola drinks. I signed the agreement after he told me that if I did not voluntarily do it, that [1088] if I did not do it he would turn it into a local attorney's hands and force me to do it before he left town, and if I did do it, that would be the end of it, and he would drop it from that time on. That was not voluntarily on my part, but I signed to keep from being embarrassed by a local attorney. At the time this Coca-Cola advertising man came through there was writing all over town that I did not handle Coca-

(Deposition of Robert E. Ousley.)

Cola and all that sort of business, we had Coca-Cola in the house and I told him so, rather the man we have told him. I do not think he was treating us right to put that up until he had found it to be a fact that we did not have Coca-Cola, because we had it, because we were handling Coca-Cola and it is an injustice to a man's business to advertise that there is only one place handling it.

Cross-examination.

I could not tell the name of the advertising man. He advertised in great, big white letters all over the window that that was the only place in town that handled Coca-Cola and all over the sidewalk, and would not give me a tray or any advertisements, for he wanted to fool the people, and he even came down and told us, he said, "I am not going to give you any advertising, you are not selling pure Coca-Cola." I told him that we were selling Coca-Cola when they called for it by the name. His idea was that I was not selling pure Coca-Cola, that was what he was inferring about it, probably he wanted to leave that impression. I never to my knowledge substituted anything else for Coca-Cola, that was not Coca-Cola when Coca-Cola was called for. I am not about the fountain except when my dispenser is out at dinner. I have not a copy of the agreement signed for Mr. Pierce. "Messrs. Ousley & Berman, Kosciusko, Mississippi. Gentlemen: You will please enclosed find statement as given to our Mr. H. B. Pierce by your firm on February 11th, 1914, as per your request this statement together with Mr. Pierce's re-

(Deposition of Robert E. Ousley.)

port has been referred to our clients, the Coca-Cola Company, who we believe will be satisfied by the agreement on your part not to handle any imitation or substitute beverage for Coca-Cola. Yours truly, Thompson, Chandler & Hirsch, General Counsel for the Coca-Cola Company." I could not say for sure whether I got that letter. Mr. [1089] *Mr.* Bearman, my partner, is not in town. Mr. Bearman opens most of the mail and I think Mr. Bearman signed the contract. I think I signed it also. I do not know whether it was written out in longhand or typewritten, I would not know the contract. That was behind the prescription counter, after it was signed. I said it was a contract, agreement or statement. I did not intend it as a confession. We read over the agreement, statement, whatever it was, but I understood it as fountain drinks, for Cola drinks. Mr. Pierce there asked me in this line, "When a man walks up to our fountain and asks for Dope or Koke would not you naturally infer that he meant Coca-Cola?" I told him that I would have no right, I could not read his mind and I had no right to do it. I don't believe I read the statement over at all. I am pretty sure I did read it. I never did admit that Koke and Dope were nicknames for Coca-Cola to Mr. Pierce. At the time I was kinder excited, I could not remember every word that was in it, it was a great big statement. Mr. Pierce came in, it was late one afternoon and I think maybe he stayed there thirty-five or forty minutes, something like that if I remember right. He came back after din-

(Deposition of Robert E. Ousley.)

ner, and he was there a good little while. If I make a confession, I did it unknowingly, I did not know, because I read Mr. Pierce this statement I told him about my instructions to my dispensers to always sell Coca-Cola when Coca-Cola was called for. I kept both in the house at the time. I had the Konut syrup in the house and the Coca-Cola. So far as I know Konut has never been substituted for Coca-Cola. Because we did not buy Coca-Cola was not any sign we did not have it in the house. I think we had Coca-Cola all the time. I know we had Coca-Cola. Now, I will tell you what Mr. Pierce did tell me; we sent a detective to your place early one morning for Coca-Cola and the boy went back and drew a bottle of syrup out of a Konut barrel, the dispenser boy or negro porter that the dispenser told to go and get Coca-Cola and he claimed he had a picture of the negro that went back and got it out of a barrel containing [1090] Konut syrup. That is what Mr. Pierce claimed. I do not know what was gotten. How many samples were taken at our place, I do not know. I have no knowledge of it. Mr. Pierce claimed one sample was carried out in a four-ounce bottle. He did not explain to me that more were taken, only one. He showed me a whole bunch, that is why I say I cannot remember what he did say. His first trip down to see me, I was out. I do not know what Mr. Bearman did. I looked for the agreement a time or two, but I could not locate it, after the fire. I have no copy of it. He told me I did not have to sign it unless I wanted to, but if I

(Deposition of Robert E. Ousley.)

did not he would get a local lawyer and force us to sign. He said he had traced a shipment to our house, that he was satisfied that we used it as a substitute for Coca-Cola. He was going to force us to sign it because he had proof that we had substituted—that is what he claimed, that he had traced it and had proof and he would force us to. His idea was that he was going to force me to stop selling Konut when Coca-Cola was called for, but I signed an agreement to stop selling Konut. I signed an agreement that I would not substitute Konut for Coca-Cola, that I was to discontinue handling Konut syrup and sell pure Coca-Cola and I signed an agreement to do that. That was what Mr. Pierce was after. So far as my knowledge goes, I have never done any such thing at my place, no substitution of other products when Coca-Cola is called for. I could not say what my boys have done. This drink Konut is rather similar to Coca-Cola. You could not hardly tell the difference between them by looking at or tasting them. I pay less for Konut than for Coca-Cola. It is a Cola drink. I took up the Koke and Dope about a month after Mr. Pierce was there, it was a little over a year ago. A traveling man came around and told me that Koke and Dope were copyrighted by the United States Government and we had as much right to sell it as Coca-Cola, when a man come in and said "Give me a Koke or a Dope," it was copyrighted. He said those two names are both copyrighted. He said "Koke and Dope are copyrighted drinks, [1091] just the same as Coca-Cola is a copyrighted drink." He said, "If you do not give him Koke or Dope you are infringing on our name as much

(Deposition of Robert E. Ousley.)

as Coca-Cola or anyone else for that." I bought it because I could know what they were calling for, Koke and Dope. It costs a little less than Coca-Cola. There is more profit over the counters. We put this in and when a man comes in and calls for a Koke or a Dope we give it to him and when a man calls for Coca-Cola we have Coca-Cola for him which we always have. He just said, "This is a Cola drink, he said a Cola drink." I do not remember him saying it tasted like Coca-Cola. He made the drinks and showed them to me. "He had a sample, and he said, 'Here are two drinks.' Q. 122. Oh, two drinks. What about the other one? Did he ask you to draw a Coca-Cola from your fountain? A. He did not draw a Coca-Cola. He said, 'You know what Coca-Cola is?'" He said, 'Here is my cola drink.' Q. What two drinks are you talking about? A. Koke and Dope. Q. Is that two drinks or the same thing? A. The same drink,—and he said, 'There is your Coca-Cola.'" When people come in and ask for Koke or Dope we give them that one thing which comes to me, Koke or Dope. It comes from the Southern Koke Company of New Orleans. We keep our Coca-Cola in a different container from this other Southern Koke Company drink. I could not draw a picture of the fountain, because I do not dispense soda, we have a regular soda dispenses there and he keeps them. In fact, I do not think half the labels are on the pumps in the soda fountain, I could not do it. I do not think there is a label on either of them because the pumps are all worn and I noticed it is changed about frequently. The syrups in the fountain, sometimes I go to make a drink and maybe there will be some other syrup in where the Coca-

(Deposition of Robert E. Ousley.)

Cola was. I am not close to the fountain all the time, unless I have to go there. I would have thought that Koke or Dope had applied to any Cola drink. I do not know what it meant before I knew of these drinks, that has been so long ago. I expect most of us would naturally infer that they were nicknames for Coca-Cola, of course, I never gave it that kind of thought. That is a picture of the store, a picture of the front. Mr. Patton was the salesman that called on me and sold me Koke or Dope. I have not the date. Koke and Dope comes in a barrel. The barrel is painted [1092] red. I think it has no label on there.

Redirect Examination.

It is always billed in the bill of lading when it comes both as Dope and Koke, but I do not recall having seen the name on the barrel. When customers come into my place of business and ask for a Dope or a Koke I do not consider they are making a definite and specific demand on me for Coca-Cola exclusively. If they did, I would not give Koke or Dope, they say give me a Koke or Dope.

Recross-examination.

I do not pretend to know my customers' mind. I would naturally make very close inquiries on anything in the prescription department if he comes back and calls for something there. When a man comes into our soda-fountain and asks for a Dope or Koke, I give Dope or Koke. I think he wants a Cola drink just like I would be if I should walk down here and say give me a Cola or Dope, I would

(Deposition of Robert E. Ousley.)

be more than likely to say Cola than any other drink. That satisfies the thirst is all I care about, to satisfy the thirst.

Redirect Examination.

When I go in a soda-fountain and ask for a Dope or a Koke, it does not make any difference the brand, in fact any kind so long as it is satisfactory. Offer in evidence Exhibit #19 to the testimony of Mr. Ousley.

Deposition of Hugh Lee Boyd, for Defendants.

HUGH LEE BOYD, a witness on behalf of the defendants.

Direct Examination.

Age, thirty years old. Live in Kosciusko, Mississippi. Lived there about fourteen years. I am engaged in the drug business. I own an interest in it. I have had that drug-store about two years. Before that I worked in a drug-store. I have worked in a drug-store before that about 11 years I reckon, ten or eleven, I do not know exactly. I have known of Cola drinks about ten or twelve years. I am about the fountain frequently so that I can hear the names our customers use in calling for the drinks they want. I am dispensing the Southern Koke Company's Koke or Dope, and Coca-Cola. I have dispensed this Hagan & Dodd drink, Ko-Nut. Customers indicate to me that they want a Cola drink by asking for a Koke, Dope, give me a shot and things like that. When customers come in and ask for a [1093] Koke, Dope or a shot in the arm, or

(Deposition of Hugh Lee Boyd.)

shot, I do not understand or consider that they are making a definite and specific request on me for Coca-Cola and nothing else, because some of my customers know what I handle. I do not know how they know I am handling Dope. The ones I speak with reference to have seen Koke and Dope and I have told them that I had it. They said they liked it better and they continued to ask for it as Dope. The words Koke or Dope or shot in the arm, do not mean Coca-Cola exclusively. I think a representative of the Coca-Cola Company called in the past year. I do not remember the date now. That is the gentleman over there. (Pointing to Mr. H. B. Pierce.) He came in and told me that we were selling Konut. I told him I was, that it was right. I knew it. He said I had no right to do it, that they had traced it from Atlanta down here and I told him that was all right. He began to talk pretty rough about it and said he was going to put it in the hands of attorneys before he left town and wanted me to sign an agreement which he wrote back there in my office, that I would not handle nothing else but Coca-Cola. I would not sign the agreement. His attitude was pretty rough, in fact I would not have liked for ladies to have been around, it was at night though at the time. He did not talk any language that a lady could listen to, in fact if my wife had been there I would have asked him to get out, that was how rough he talked. His manner was overbearing. I did not sign the contract. I told him I would rather not sign it; he said when he got back he would send me a

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copy or blank form whichever it was, to sign, which he sent, but I did not send it back to him. I subsequently got a letter from him, from Atlanta, enclosing a contract to be signed by me. I show you a paper marked Defendants' Exhibit #31, purporting to be a letter from Thompson, Candler & Hirsch, dated February 17th, 1914, to Boyd & Jackson Drug Company, Kosciusko, Mississippi, showing on the left-hand margin, dictated by H. B. P. and J. I will ask you if that is the letter you got from him. That is the letter, yes, sir. I show you another paper marked Defendants' Exhibit #32, and ask you [1094] if that is the contract that he enclosed. Yes, sir, that is it. When you got this contract, what did you do with it? Why, I put it away in my safe.

Mr. LITTLETON.—I tender and offer in evidence on behalf of the defendants in the above-entitled causes Exhibits 31 and 32, which are the papers referred to, as evidence on behalf of the defendants.

Cross-examination.

I said I did not know any way to prove that they do know I handle Coca-Cola. I handle advertising of Coca-Cola sometimes, though I have not lately, but they would know it when I advertised it, and there was no reason to think that I would cease to handle it, not until that fellow wrought on our nerves. I do not know whether Mr. Pierce said anything about samples or not. I think he told me he had evidence that when Coca-Cola was asked for at

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my place of business that some other product was given. I was not excited so very much. I do not know that he told me, I could not swear that he did. Mr. Pierce come in and told me that I was knowingly selling this, that I was buying and selling this other stuff for Coca-Cola and that it had to be stopped. He said I ought not to have it in my fountain, that he would see I was going to get it out. I do not remember the entire thing, he talked, it was pretty rough language. Both of us said words we ought not to use; all I can say is it was language no lady should hear. He told me he was going to have to put the case in the hands of an attorney before he left town in a pretty rough manner and talked rough. His language was rough, cuss words. I do not think either one of us said anything too nice. I do not know what he came for. He said I could not substitute, I told him I was not substituting. He said I had Konut in my fountain. He said it ought not to be in my fountain at all. Dope and Koke, Cola and shot in the arm mean any Cola drink. I have been hearing it ever since I have been big enough to hear. I always had my mind made up that way, I think they were nicknames for any Cola. I think they could be nicknames for Coca-Cola as well as nicknames for Gay-Ola or Dope. I never thought they applied exclusively to Coca-Cola. I have been hearing of Koke and Dope ever since I have been big enough to drink it. I heard of [1095] this Southern Koke Company about two or three years ago. Afri-Cola I have always known of

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that as Koke. I could not say exactly how long I have known of Afri-Cola. I do not think these nicknames arose from Coca-Cola. I do not know where they came from. The public at large mean by Koke and Dope any Cola drink, because they come under that head. It is a nickname that can be called anything, anything called for a Cola drink, you can get a Cola drink. Just the names they have got, they come in and call for a shot, a nickname for Koke, Dope, any Cola drink. I just have the impression, that is all. People know I have Koke and Dope. I have one doctor who asks for it all the time, he is not the only one. I reckon there are fifteen or twenty in our town altogether. We have advertising in there; I have had some of it off and on for the last five or six months, advertising of the Southern Koke Company, Koke and Dope on it, I believe. It is on a green looking card, about that long in white letters. It has a little string in the middle. It is hanging up in my place right now. It has been up three months, I reckon, two months anyway for sure. I do not know where these terms Koke and Dope arose from. I heard of Koke and Dope all my life—so far as that is concerned, Koke and Dope have been used ever since I have been big enough to drink it. This Cherro-Cola is another Cola drink. I do not know whether Coca-Cola was the first I heard, I cannot say. I do not know how long they had been bottling that stuff. I do not know whether I knew of any more than Coca-Cola or not. I expect I have forgotten the others because I have drank it at these

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country stores. I got Coca-Cola first, but other than that I do not know. When I asked for Koke and Dope I expected to receive a cola drink. I might have expected to receive a Coca-Cola. I did not know the difference. Koke and Dope is just one drink, it comes in a barrel, a red barrel, but I do not know what is on it in the way of a label. It cost me a dollar. Coca-Cola costs me a dollar and a half, but I get a rebate, depending on how much I use. I bought this product from the Southern Koke Company from Mr. Patton. [1096] Think he told me about this Koke and Dope, that he was handling, and wanted to put in some. He said it sure was a good thing and he was selling a good deal of it. He had a sample and mixed a drink. I did not know which one I was drinking, Coca-Cola or it. He never said a word about it being like Coca-Cola. He told me I could not tell them apart, I think. A man come along and told me about Koke and Dope being copyrighted. He did not say anything to me that you could not sell anything but their stuff when people asked for Koke and Dope. He had a card; I do not remember what was on it. I know Mr. Ousley. I guess he has been on the stand here to-day. I never talked to him anything about this. I did not ask him nothing about this. He said something about something, I don't know what I come on in here. I started to and he talked to me and told me to go on.

Redirect Examination.

The Coca-Cola representative wrote a sign over this other store as well as I can remember, Mr.

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Croch's, at Kosiusko, saying that it was the only store at the time that sold Coca-Cola there. At the time that was written up there I had Coca-Cola. The others said they handled it too and I guess they did. I do not know why he put it up there, it looked like he wanted to hurt us, because I was handling some Southern Koke Company's goods.

Recross-examination.

At that time, when the sign was put up there, I was also either handling Konut or this other, Koke and Dope, it may be both. I commenced handling this product for the Southern Koke Company two years, or a year and a half ago. I do not remember about what time it was this man put up that sign.

Deposition of S. T. Mayfield, for Defendants.

S. T. MAYFIELD, a witness called on behalf of the defendants.

Direct Examination.

Age, thirty-two years. Full name, Stephen Talliaferro Mayfield, commonly known as Steve Mayfield. Reside, Birmingham, Alabama. When I first went to Birmingham I traveled out of there. I have resided there permanently since about 1903. I am city representative of the Fies Liquor Company. My father is J. C. Mayfield. I lived in Atlanta, Georgia; it must have been about 1888. We [1097] moved there about that time. I was a child, about five years old, and all I have is just, of course, a child's recollection of such little incidents that have occurred to me and now that I can place and know

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other facts, I judge it is just about that time. I remember living with Dr. Pemberton and his wife and son. I remember one instance connected with that, the shape of the house, its location toward the street and I also remember that I was very much horrified at Charley Pemberton, Dr. Pemberton's son, he blew his nose on a towel one time. That far back I have not any recollection of what my father was engaged in; I can remember something about him being engaged in the lumber business in Florida, and coming up after 1888, about, I don't know just what time, I can remember he was a supply merchant in Roanoke, Alabama. My father manufactured and sold a product by the name of Koke. It must have been about 1892, in Atlanta. At that time I was about nine years old and I was in school in Atlanta and on Saturdays I would go down to the place where they were engaged in the manufacture, and I remember on one occasion I got a lot of red paint on my clothes; I was fooling around the kegs and used to get sugar down there and take it home and make candy. He was manufacturing Koke at that time. I remember he had a lot of boxes filled with bottles and products and a lot of labels; I used to play around there. I drank some of this Koke; it was a fountain drink, a syrup. It was a dark brown; I used to dilute it with hydrant water and drink it. That place of business was on Trinity Avenue, I believe, that is my recollection, near Pryor Street. I was in school, and, of course, come down to the place of business on Saturdays, and occasionally during

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the week time. Mr. Bloodworth was in the business with my father. My father and Mr. Bloodworth stayed together as I can remember, until about 1895 or '6, something near that, whenever the Cotton States' Exposition was. I got to be a pretty good-sized boy about that time and was some help to my father and a man named John McCowan, who was associated with my father in his employ or connected with him. [1098] My father stayed in Atlanta until about 1898, just about 1897 or 1898; when he left there, he went to New York. He continued to manufacture this same product during all the time he was at Atlanta, this Koke. Mr. Bloodworth left sometime, possibly two or three years before 1898, and my mother and John McCowan made Koke; of course, I helped when I was around. I do not know whether they owned any interest in Koke, or were just working for my father. In 1898 I went to New York. I stayed in New York for about a year or a year and a half. When my father went to New York he manufactured Koke. He manufactured it in Jersey City. When I left New York I went out west to California. I stayed out there about two years—two years and a half. When I came back from there I went to Nashville; I think it was in 1901, possibly in 1902. When father left New York, two of the children were sick down at Roanoke, Alabama, and I think he came possibly to Birmingham first or Roanoke, and then to Saint Louis, I do not remember, I was, of course, out west at the time, and I only had his letters to go by. When I went to Nashville in 1901 or '2, I

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went in and helped my father manufacture Koke, Celery-Cola, and our other preparations. His place of business in Nashville, the office was in the Vanderbilt Building for awhile, and we had our laboratory in the rear. The difference between the Koke and Celery-Cola was we added celery extract to the Celery-Cola. We sold it, the product, in the syrup or extract form. We did not have a bottling plant in Nashville. Celery-Cola was bottled by Diehl & Lord. I don't think there was very much preference shown to either Koke or Celery-Cola. We sold the Koke to soda-fountains and to bottlers. We continued to manufacture this Koke and Celery-Cola in Nashville till about 1903, I believe, 1902 or '3, then we went to Birmingham, and about the same time we had a plant and syrup business in Saint Louis, along up to and including a part of the Exposition in Saint Louis; we went there for that purpose. I am not so positive as to dates, but that is the way I remember it. At the time we were making this Koke and Celery-Cola in Nashville, it was being made in Saint Louis. [**1099**] I do not just remember about 1903, as I remember the date, 1902 we went to Birmingham and that has been a good while ago; I do not remember so positive about the different year. My father was not with me all the time I was in Nashville; he was connected with an oil company and he spent a part of his time in the oil field, and a part of his time in Saint Louis. Both of my brothers were with me in Nashville, J. W. & J. C., Jr. They were in school part of the while, too, as I remember it. When

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I went to Birmingham my father was interested there as a stockholder or partner with C. H. Schuyler, in the vinegar and cider business in Birmingham, and Schuyler went to the bad and it was necessary for my father to go down there and kind of take charge; I was in and out of there, too. I was on the road at the time. In Birmingham besides the vinegar and cider business, we manufactured and sold Koke and Celery-Cola and Pepsi-Nola extracts and syrups, in addition to cider and vinegar and hop ale. I did not mean to say we manufactured the hop ale. We bought that from a brewery in Birmingham and also from an extract concern in Saint Louis; a fellow by the name of—let me see—I have forgotten his name, put up an extract of hop ale at that time; it was supposed to be very low in alcoholic percentage to the extent that it was not intoxicating, and I remember the labels. In Birmingham, we took over as I told you, the business of Schuyler, and he was located at 15 South Twentieth Street, and we afterwards moved to Morris Avenue. We shipped the Koke syrup to the dealers in kegs and barrels, half barrels and whole barrels. These barrels and kegs were painted red. They were labeled Koke. I remember we used several kinds of labels when, I believe most every time we had printing done the stationery, shipping tags, etc., there was more or less change in the labels that went on the barrels. This Koke was bottled also in Birmingham. I was on the road, of course; I sold it and I did not do any of the bottling, the actual bottling. I traveled through in sell-

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ing this Koke practically every State in the South, principally Virginia, [1100] West Virginia, the two Carolinas, Tennessee, Kentucky, Georgia, Alabama, Mississippi, Louisiana and Texas. My father continued to manufacture and sell this Koke in Birmingham, until about 1908, I believe that was the year. After that, as I remember it, he went to Shrevesport and Texas, Dallas, Texas and Fort Worth. I continued right in Birmingham. When we wound up our business in Birmingham we had a number of outside accounts and I collected up those and would occasionally ship an order, mail order for Koke, up until about 1910, when he practically took over all the business himself, these accounts I either collected them or they had become outlawed by that time and anyway, I wound up the business for him about 1910. I and my father bought from the Birmingham Bottling Works, from the administrators of P. L. Houppert—I hand you a paper marked Defendants' Exhibit #26, purporting to be an assignment from A. E. Campbell and Frank Seiver, Administrators of the estate of P. L. Houppert, deceased, to J. C. Mayfield and Steve Mayfield and will ask you to examine that and state what that is? This is a bill of sale for the trademark and business, and goodwill of the trademark Dope. That assignment or bill of sale was given to me and my father about the date, about the time it bears date. Let me see the date on that. It is dated the 17th day of May, 1913. Now, I hand you a paper marked Defendants' Exhibit Number 28, signed by the Birmingham Bottling

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Company by E. J. Smyly, president and by Mayfield & Mayfield, by Steve T. Mayfield, and dated the 6th day of May, 1913, and will ask you to examine that and state what that is. This is a bill of sale or assignment from the Birmingham Bottling Company to my father and myself for the business and goodwill of the trademark Dope. Nok I hand you a paper marked Defendants' Exhibit No. 29, dated the 12th day of April, 1913, signed by Mayfield & Mayfield, J. C. Mayfield and Steve T. Mayfield, Birmingham Bottling Company by E. J. Smyly, president, attested by A. E. Campbell, secretary, and will ask you to examine that and state what that is. This is a license or agreement **[1101]** to allow the Birmingham Bottling Company to sell Dope in Jefferson County, Alabama, to sell and distribute it. As I understand it, the Government requires a certain form of assignment or whatever you lawyers call it, bill of sale, whatever it is called, before they will pass on it favorably in Washington, before they grant the transfer of the trademark. And I drew up the first two papers exhibited, or rather my lawyer did, and possibly one or two others in order to get it in legal form and in regard to that question I bought first, rather my father and I, the trademark Dope and business of selling Dope, the accounts for the—that had been made on the books, some little machinery and paraphernalia that went with the business. You understand that the bottling business and business of manufacturing Dope, well, of course, conducted by the Birmingham Bottling Company was kind of

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separate and distinct affairs, just like a man in business, he will have a mail order business, a retail business and possibly a wholesale business. We bought out the business of manufacturing and selling Dope. The Birmingham Bottling Company's principal business was manufacturing and selling or bottling soda-waters, ginger-ales, seltzers, etc. I have not the list of customers that were turned over when we bought the business of manufacturing and selling Dope. They are either in my father's or my brother's possession. That list of customers was turned over by Mr. Smyly of the Birmingham Bottling Company. I will produce that list of customers if I can find it, and file it in the record. All that is necessary to manufacture the extract or syrup of Celery-Cola, Koke or Coca-Cola is the essential oils, coloring, acid, water, glycerine and other ingredients that enter into the compound, which, when bought from the manufacturers or jobbers come either in barrels or carboys, bottles or jugs, a barrel and a paddle. The percolator is a big tin horn with a strainer at the small end; the way they get the filtered extract of Coca is to buy the macerated leaves which are dried up; they are a kind of greenish color; you place them in the [1102] percolator and that is the way that we made the filtered extract of Coca, and we added alcohol and water in quantities and one or two other combinations, and poured them over these leaves and what come out of the little end of the horn was coca, the extract of Coca, the U. S. P. of which is, I think about 3 per cent cocaine. Hardly

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any manufacturer of Coca nowadays uses that process because they can get a much more uniform piece of goods from larger manufacturers and also very, likely it is cheaper and then it is more satisfactory. All that was necessary of the machinery was a percolator, a paddle and a tub or kettle. The machinery turned over to us, as I remember, was the mixing tank and paddle. I asked Mr. Smyly to store them there for me either until I had occasion to manufacture Koke and Dope in Birmingham, or until my father wanted to use them. We did not take these away as we did not have any use for them, because he has a complete plant here in New Orleans, Van Dusen had his plant in Saint Louis.

Q. 105. Was the formula for making that Dope made known to you at the time of making this purchase? A. Yes, sir.

Q. 106. How did that formula compare with the formula for making Koke?

A. Well, practically the same thing, it was the same; there might have been some little minor detail as to some ingredient; but I did not notice it if it was. Of course, I knew the formula for making Koke, and have it in my head and I have had for a long, long time.

The reason we gave this license back to the Birmingham Bottling Company for manufacturing and selling Dope in Jefferson County, Alabama, was that they were selling the stuff practically all over Jefferson County, and it is the fact that they had a mighty good sale on Dope since I came to Birmingham,

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[1103] moved from Nashville; they were strong competitors of ours and the goods were well and favorably known and called for and we were anxious to acquire this trademark Dope, and when they practically give us the whole world and only wanted to keep the exclusive sale of Dope in Jefferson County, why, naturally we deeded it back to them, not deeded it back to them, but gave them this instrument here. The reason these instruments bear different dates was that was a matter [1104] of Government requirement, the United States Government requires, I would have been satisfied to have accepted a verbal contract or statement from the administrators of the Houppert estate, and also from Mr. Smyly regarding this bill of sale, but as I explained in things of this kind, it was necessary to draw up a number of papers in order to fill the requirements of the Patent Office, I believe, as to the legal transfer of the trademark, business, and goodwill of this Dope. I have lived in Birmingham ever since this transaction occurred. The goods of this Birmingham Bottling Company were more or less favorably known. They had done some advertising and they had also had a salesman on the road; they had introduced their goods at different places and when we acquired it, why, naturally, my father began to manufacture the Dope, too, and he has continued to manufacture it ever since. Defendants' Exhibit #32 is an assignment from me and my father of the trademark Dope to the Koke Company of America. We sold the business and goodwill and right to make dope and all that. The Koke Com-

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pany of America was a corporation and my father is president of it. The Koke Company of America has continued to manufacture and sell Dope since its organization or since this assignment to it to the best of my knowledge. That is the signature of myself and father to this instrument, and given on the date it bears date.

Cross-examination.

I was born in Roanoke, Alabama, in 1883. My father was in the lumber business in Florida. Arcadia, I think, is the name of the town. I do not remember the year, just have a faint recollection. He lived in Arcadia just a short time. I can remember hearing my father talk about Koke and I can remember being down at that little place on Trinity Avenue, near Pryor Street, and remember seeing it. I saw them making the extract down there, the syrup and finally the location of the place and the bottles of medicine and stuff, and labels and things that were around there. I know it was koke, because Mr. Bloodworth talked Koke, my father talked Koke and my mother talked Koke and I drank Koke. I know they make Koke because **[1105]** I drank it. I do not recollect anything else they made. I remember they had some medicine and things down there in bottles. I do not remember anything about Celery-Cola at that time. I do not remember of drinking or seeing Coca-Cola down there. I cannot say I remember the kind of ways the Koke barrels were marked. I can remember the stationery with the word Koke because I used it as a kind of a

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scratch pad. Somewhere about that time, 1892, I cannot remember the date because I was very small. I have forgotten the name of the school I attended, it was located out near the Jewish Orphanage Home. I think it was a public school. I think it was Frazier Street School. The name of my father's company at that time was either the Pemberton Chemical Company or the Pemberton Medicine Company. I do not know whether it was an incorporated concern or not. I do not remember what else was on the stationery of the Pemberton Chemical or Medicine Company, for you might say for my whole lifetime my memory has been associated with the word Koke, it was one of my first recollections and my father being in the business continually I naturally remember that. I have a distinct recollection of seeing Koke on that stationery. That was either the Pemberton Medicine Company or the Pemberton Chemical Company. I think it was the Pemberton Medicine Company. It did not have the name of the officers on it; it had Wine of Coca on it. I do not know where any of that stationery is, or who printed it or anything of that kind. I do not remember anything else it had on it. I do not remember as to the exact time either, it had Koke, it was somewhere about that time, somewhere in my early childhood days. My father was interested in a Hollywood Cemetery in Atlanta at this time, a real estate company just at that time, I do not remember whether he was or not, of course I can remember he was interested in this. I do not remember a concern

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by the name of Standard Bottling Works at that time. I think my father was connected with in 1895, the Wine Coka Company. They made Wine of Coka, that is all they made to the best of my knowledge. I do [1106] not think the Pemberton Company made Wine of Coka. As I remember it now, he was a stockholder in that. I do not know whether he was manager of it. I do not recollect. It might have been or it might not have been. I do not recollect how long my father did business in Atlanta, Georgia. He left Atlanta about 1898. I do not recollect any other concern or name of any other concern that my father did business under in Atlanta except the Pemberton Company, until about the time he left Atlanta. The only one that I do positively recollect is this Pemberton Company. I lived on Ormond Street. I remember father was interested in Wine of Coca but I do not know whether he was a stockholder or partner or what he was. They were on Forsyth Street. I went in their place of business. They were making Wine of Coka. I do not think they were making Koke. I do not know the difference between Wine of Coka and Koke. I do not remember whether the Pemberton Company had a license to do business in Atlanta, or the Wine of Koka Company. In 1896, I suppose the Wine of Coka were still in business there, I do not recollect where they were at all. I think my father was interested in the Hollywood Cemetery Company. He and Eley were trading; they had an office, as I remember it, in the Norcross Building. Possibly it

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was Oakview Cemetery, it just impressed me it was the Hollywood, it might have been both the Oakview and the Hollywood Cemetery, I do not remember about. I do not remember the Guarantee Saving Company. I suppose my father has a pretty good working knowledge of chemistry so far as it pertains to the manufacture of Coca-Cola and Koke. I expect my father left Atlanta in 1898, as I remember it. I believe he came back along about 1901 or possibly before. I was out west at the time and of course corresponded at intervals. I do not remember my father's connection in 1901 with the Standard Bottling Company. I know Mr. Harris personally. I have no stationery he had with the name Koke on it —I mean from 1892 to 1898, that I know of. I do not know where the books are of the Pemberton Medicine Company or Pemberton Chemical [1107] Company, nor of the Wine of Coka Company, nor of the Hollywood Cemetery Company or any of the Companies you allege he is connected with. During the period you have mentioned I can produce nothing with the name Koke on it. They may be in existence so far as I know, but I do not know where they are. From 1892 to 1898 I worked for father as a son would for a father. My mother helped father bottle. Mr. Bloodworth helped him and John McCowan helped him. I do not know whether Mr. John McCowan is dead or alive. My mother was a Mrs. Diva Brown and a Mrs. Budwig, she is now. Mother helped father during those periods, that is from 1892 on to 1898. She worked off and on, she

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assisted my father on the road in selling Koke, and she was divorced from him sometime about—I do not remember the exact date, and went to New York. During that period I do not remember anything about Celery-Cola at all. I do not remember the date Mr. Bloodworth went out of the business. When Mr. Bloodworth went out, no one bought an interest in the business that I know of. I don't know what Mr. Bloodworth took with him or what he got for his interest in the business. I do not know just how long father was in New York. I cannot remember the exact time. I was with him about a year and a half. He manufactured Koke over in Jersey City, on Warren Street, as I remember it. I do not remember about the number. We started to manufacture Celery-Cola there, I think. That was about the time we started. We also manufactured Koke there between 1898, '99 or 1900. I do not just recall the name of the concern there, the syrup or extract company. I do not just recall it, it might have been Mayfield Manufacturing Company, it seems to me it was Syrup and Extract Company. With my father there in Jersey City, besides myself, was my mother and her husband, Judge Brown. She married Judge Brown at that time. Judge Brown lived in Jersey City. I do not remember his initials or first name. From New York I went to California, 1901 or '2 I came back. I was in the Navy in California. I was in the Navy about two years. I went from there to Nashville about 1901 or 1902. My father, when he moved from New

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York, might have gone to [1108] Birmingham, Roanoke or Saint Louis. The only recollection I have is the letters that he wrote me. I remember getting a letter from possibly all three of the places, or from just two, or one or them. I served on the Ship Independence. She was a receiving ship, and on the Alert and let's see, Oh, she was Admiral Farragut's Flagship during the battle of Mobile Bay, an old wooden boat, I forget her name. My father got in with Senator Pettus and Morgan of Alabama and got me discharged. I do not remember what happened to the business in Atlanta when my father left Atlanta in 1898, or thereabout. My being a young chap and any business deals, transactions or things like that I could not know. I left before they closed the business in Jersey City. My father was in business when I left. The next time I took up the business was when I went to Nashville in 1901 or possibly 1902. My father's place of business at the time I took up the business again was in the Vanderbilt Building and the laboratory was in the rear of the Vanderbilt Building in Nashville, in the alley in the rear. Mr. Lord and my father told me that he did manufacture at Diehl & Lord's place. He manufactured there Celery-Cola and Koke. My impression is when he first went to Nashville he manufactured in Diehl & Lord's place. I remember a number of occasions later on when he would sign contracts with a fellow to bottle Celery-Cola or Koke, there would be a verbal agreement or understanding that we were to have a little space to manu-

(Deposition of S. T. Mayfield.)

facture syrup in. My father was connected with the oil business in Nashville. He was not with any bottlers at all. I do not remember that he was with the Tennessee Carbonating and Bottling Company. I do not remember, that he was even a stockholder in that Company. My father put in a contract for the bottling of Celery-Cola, a stock consideration or something of that kind. I do not remember whether the Tennessee Carbonating and Bottling Company ever bottled Koke. They bottled Celery-Cola and different flavors of soda-waters. I do not think any bottling concern in Nashville bottled Koke. At that time we did not have a bottling works. This bottling [1109] works was formed there about the time or just after I left Nashville and went on the road. At the time that bottling concern was formed I was traveling out of Birmingham. I do not know out of my own knowledge whether the Tennessee Carbonating and Bottling Company ever handled Koke. I can only remember one occasion when I was in that plant and then it had been in operation for some time, as I remember it. I do not know just what they did bottle, but it was a bottling works and presumably, they bottled all kinds of flavors and this Celery-Cola too, I think. They might have bottled Koke. The name of my father's business when he was in Nashville was J. C. Mayfield Manufacturing company. I think it was a corporation. He possibly had other interests. The first information I had as to the different companies, the charter for the bottling works in Nashville, was drawn up

(Deposition of S. T. Mayfield.)

in 1904, that has refreshed my memory to the extent that I remember I was traveling out of Birmingham at the time. I had left Nashville. I either left Nashville just before or about the time it was formed, of course I did not know the exact date, either 1902 or 1903. When I came back, I went to work helping my father, that was primarily my object in coming back and I went on the road for him—not immediately, but I went on the road shortly after some time after I came back. On the stationery of the J. C. Mayfield Manufacturing Company was J. C. Mayfield Manufacturing Company, Nashville, Tennessee, Celery-Cola Extract, Botlers' Supplies and something else that I do not remember. We had stationery printed at different intervals and I cannot recall about but just one letter-head. I do not recall whether that Nashville stationery had Koke on it. I remember Celery-Cola on it. I did not write this letter dated at Nashville in August, 1913, to J. Muse & Co., Hodgensville, Kentucky. I do not recall the concern of that name at this time. During the period of 1903 I was selling Celery-Cola. We had two preparations, Celery-Cola and Koke, frequently we would be in a good sized town where there would be two or three or four bottlers, where [1110] it would be possible to sell both and give one the trade name for Celery-Cola and the other Koke, towns of 18 or 20,000 people. At Macon, Georgia we had two, one was named Milliron's, the other I have forgotten. I do not remember which one had Celery-Cola and which one had Koke. I

(Deposition of S. T. Mayfield.)

do not recall just when he was our customer but I recall that in towns which were large enough we used the name, let one bottling company work Koke and the other Celery-Cola. Down in Savannah we had two bottlers. I do not just recall their names. One fellow was named Burns. The price of Celery-Cola at that time depended on the man, his worthiness for a line of credit and what kind of a man he was and so forth, from around three and a half dollars to six a gallon. That was extract. We were making it in syrup at that time, getting a dollar and a dollar and a quarter a gallon. That applies to Koke the same. I do not recall writing to a customer that the cost of the prepared foods, ready for dispensing at soda-fountains, is less than sixty-five cents per gallon, which is practically half the amount you have been paying for similar goods. It is a fact to the extent that a man that bought Celery-Cola in quantities in the extract form could manufacture it for about sixty-five cents a gallon. That is he could put carbonated water to it and simple syrup in it. I do not remember whether we ever consigned any Celery-Cola, or Koke at that time or not. The name of our concern was J. C. Mayfield Manufacturing Company, and was doing business with an office in the Vanderbilt Building and the laboratory was in the rear. At one time it was on Market Street. I do not remember the number. Diehl & Lord was bottling Celery-Cola at that time. Not necessarily all the time but they did bottle quantities of Celery-Cola and Pepsi-Nola. A number of customers bottled Koke. We

(Deposition of S. T. Mayfield.)

had several customers at Nashville for Koke. There was a man at the transfer station, and another one across the street from the Tulan Hotel, and several others, I do not recall. As I remember that was Freed and Haas at the transfer station. I did not do any actual delivering. I think it was delivered to them, as I recall. When we [1111] moved from the rear of theVanderbilt Building to Market Street, to a two-story building, the second floor was occupied by the Boylin Printing Company, the ground floor we had for our place of business and Boylin began about that time to specialize on bottlers' labels. He issued a catalogue and on the road I would frequently sell labels for him. Now, it was a custom of the printing house to give a good low price for the labels. Boylin devised a scheme whereby—I am not a printer, he would have electrotypes, the matter all made up in electrotypes, I guess with a dozen or two dozen cuts, the name, that would be a label of course and Delicious, Refreshing, of course something like that, and an attractive label made up in one, two or three cuts, with different colors, the name being inserted in the label, would be matticed out where they could set up anything they wanted in there. Now he took all this matter, to set up, it was in a form that contained twelve of these electrotypes, the twelve say he would call them two or three lemon, ginger ale, Koke or Celery-Cola, or two or three other labels, other flavors that a bottler would want, by making a quantity the price was on say 25 or 50 or 100 thousand lots of labels, he could get his whole

(Deposition of S. T. Mayfield.)

season's supply at a very low price, and he naturally wanted an uniform label for his cuts or label and so his customers could recognize his bottled products from his plant, by looking at them frequently he would give an order for say five or ten thousand, whatever quantity he would need in making up the shipment, or order for labels, for so many thousand Koke labels or so many thousand Celery-Cola labels, sometimes as I remember, it would be set up in block type and add the electrotype for the Celery-Cola and Koke that they would want. The labels for Koke, as I have just explained, were sometimes set up in block, as I recall and sometimes in script. Boylin made labels for us. We had a good deal of advertising for all during that time we advertised Koke and Celery-Cola, more or less extensively. We advertised Koke at that time. We had hangers and display cards. I [1112] have none of them to my knowledge. Mr. Boylin would get up some advertising and other people. I do not recall, I explained to you along about that time, I was a salesman on the road. My father was in and out of the office. I think my aunt was there, Mrs. George Thomas. She is in Nashville. So far as I know, this Tennessee Carbonating and Bottling Company bottled Celery-Cola. That company I think was promoted and formed by my uncle Mr. George Thomas. Diehl & Lord did not bottle Koke, they bottled Celery-Cola to the best of my knowledge. I do not recall the names of the firms that bottled Koke. That has been a good long while ago, but I

(Deposition of S. T. Mayfield.)

sold thousands of people Koke. I do not know who bottled Koke in Nashville at the time I was there. It is a long while ago, and I do not recall who bottled Koke. It is fifteen years ago and selling so many many people I naturally could not recall them. We made Koke up in extract form. The Tennessee Carbonating and Supply Company was formed about the time, or after I left Nashville. I do not know anything about that, or what happened there. My father went, as I understood, from Nashville to Birmingham. I do not remember when we left Nashville. I do not recall what became of the business there. My father went to Birmingham about 1902 or '3, as I remember it. At Nashville, we had a good number of customers, Diehl & Lord was a large customer. Mr. Schuyler was in and under the name, as I recall, of the Schuyler Vinegar Company. S-c-h-o-o-l-a-r, or e-r, I think it was. My father had an interest in that business. Shortly after my father went into the business, my impression is that Schuyler either gambled or got his business in a bad shape or something, anyway my father took hold of it. He operated it as a going concern. It was the Mayfield Manufacturing Company after this transfer was made with Schuyler, but what the business details were I do not recall. I was on the road practically all the time from 1902 to 1908. I traveled for my father. It might have had the name Celery-Cola Company sometime, I do not recall just the year. It was changed to Celery-Cola Company, I imagine somewhere along in [1113] in 1904, 1905, or 6. I

(Deposition of S. T. Mayfield.)

do not even know—well, I could not remember all those details, as I explained, because I was on the road. After the Schuyler Vinegar Company, it was Mayfield Manufacturing Company. That was a corporation, I believe. The Schuyler Vinegar Company were strictly in the cider and vinegar business. When my father became connected with the business, the name was changed at that time to the J. C. Mayfield Manufacturing Company either at that time or some time later. They simply moved the business down to Birmingham, as I remember.

Q. 440. What did the J. C. Mayfield Manufacturing Company continue to manufacture?

A. They continued to manufacture Celery-Cola, Koke, Pepsi-Nola, just as in Nashville. [1114] They had stationery, I just do not recall what was on it. To the best of my recollection it was the same stationery, possibly as we used in Nashville. In Nashville as I recall it, the J. C. Mayfield Manufacturing Company had Celery-Cola on the letter-head. When my father moved the office to Birmingham he moved in a building occupied by Schuyler at 15 South Twentieth Street. He stayed there a couple of years, I suppose and then they moved to Morris Avenue. I do not recall whether they changed the name to Celery-Cola Company then or not. I do not remember what the Celery-Cola Company had on its stationery. The number of the place on Morris Avenue was 2114 and '16, it seems to me we acquired one of those buildings after we moved, but as I remember we were located at 2116 first. I do

(Deposition of S. T. Mayfield.)

not know whether the J. C. Mayfield Manufacturing Company were then in existence or not. It might have been the Celery-Cola Company along about that time. About that time was when the change was made, to the best of my recollection. I do not remember who they were buying their stationery from. They had some lithographed labels, it seems, along about that time with two or three or four colors, and then we had some printed labels in just two colors, and whether they were blue and white or black and white, I do not just recall but the lithographed labels were several colors, I do not just recall. The name of that product I have just described was Celery-Cola and Koke. I do not know where we bought **[1115]** those labels, being an outside man, but they had a bottling works over on Morris Avenue and labeled the stuff Koke, and made other stuff, ginger ale and other stuff, there was a quantity of Koke and Celery-Cola labels, stationery and advertising. I do not remember what was on the advertising. Naturally I would not know from whom he was buying from, but frequently we give a man advertising with some, either muslin or canvas banners or streamers, some oilcloth, some tin signs, diamond-shaped hangers, some hangers suitable for display at grocery stores and soda-fountains. That was for both Celery-Cola and Koke. They used sometimes block and sometimes script type, as I recall it. Hop ale was labeled, hop ale, nonintoxicating, and possibly the name of the people we bought it from. We bought it from the

(Deposition of S. T. Mayfield.)

Birmingham Brewing Company in Birmingham, and possibly some Saint Louis house. We did not buy any from Milwaukee. I do not recall about an extract from Saint Louis. I was not selling any intoxicating drink at that time. The State and county laws and the Federal laws were very different, the Internal Revenue Department at Washington decreed that anything containing over one-half of one per cent alcohol, you must have a revenue license; now that would make up on the basis of one gallon of whisky to two hundred gallons of water, hardly a trace, and the State and county and city laws are very different. Now, over in your town, Atlanta, your State courts have decreed that anything under four per cent alcohol is not intoxicating, and well there is practically no beer that is made that is over four per cent alcohol. We had a Government revenue license. If Mr. Joseph testified that was his regular beer he did not know what he was talking about, either that or Mr. Joseph's brewery misbranded it. We bought the hop ale from Mr. Josephs. I do not know as it was really beer. That was long before the pure food law went into effect. I do not know, I know the State and county laws are very different in regard to what constitutes intoxicating drinks. We were doing a nice business in it. I do not know where the books of the J. C. Mayfield Manufacturing **[1116]** Company and the Celery-Cola Company are. I cannot recall when the last time I saw them was. I was an outside man. About 1907 or '8 there was a fire down on Morris Avenue. I was not

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there at the time but it occurs to me possibly some of the records might have been destroyed there by the fire and water, but I do not even know, of course, we had records and books there, I did not pay any attention to them. I was selling on the road at that time, Koke, Celery-Cola, cider, vinegar and soda-water, and hop ale. I do not recall anything else made at this place at this time. This hop ale contained more than one-half of one per cent of alcohol. That was the Federal rules at that time, that anything containing anything more than one-half of one per cent of alcohol was intoxicating. I suppose there was a little kick in the cider, it sold. I do not know the alcoholic percentage in it. At Birmingham we shipped Koke in one-half barrels, painted red, with the labels on. We used a stencil part of the time, stenciled on the barrel, and possibly some of our shipping tags had Celery-Cola or Koke on it, I do not just recall at the time, but we had the usual shipping tags where we would ship soda-water, where we would return empties, etc., used different tags and then we had a little printing outfit where we could set up our own tags, of cardboard, say about four or six inches as I recall it, some of them were stenciled on there and some of this stuff did not and in selling this hop ale and soda-water we would say "Return when empty to the house," you see, and possibly on some of the stuff as I recall, was a blank for the names of the parties sending the stuff back so as to keep a record of the empties. As I remember it was used practically altogether on

(Deposition of S. T. Mayfield.)

soda-water and hop ale, that is where there was bottles to be returned. We had a rubber stamp outfit there at that time. I do not think we ever had that for Koke. I do not remember from whom we purchased any labels at all. We bottled Koke down there too. We used bottles, like all the soda-water bottles and mineral water, seltzer and Coca-Cola bottles use, just a standard bottle. It was [1117] just the same as the mills say a fancy flour or a full patent flour, it was a regulation bottle. It seems to me that we did not use the Hutcheson Bottle in Birmingham, we used the crown bottle, had a cap on it. I do not know where we bought our caps from. Some were decorated caps and some were blank. Decorated with Celery-Cola, possibly, Koke, I do not just remember. I do not remember just the time we started using a decorated crown. I remember having Koke on the decorated crowns. We put the crowns with the decorations on them on the Koke bottles, to the best of my knowledge. It seems to me there were one or two who bought Koke in Charlotte and Spartanburg. I do not recall the names of any customers for Koke I have had in any states I have mentioned, the two Virginias, the two Carolinas, Kentucky, Tennessee, Alabama, Mississippi and Texas, it has been a long time ago. My connection with the companies ended in 1908. I continued on collecting in accounts and sold some stuff. I collected up the accouts for the Celery-Cola Company. That Celery-Cola Company han-

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dled Koke, to the best of my knowledge. When I wound the business up, my father went to Shreveport and Dallas, I do not remember which first. I do not want to testify about anything of my own knowledge after having collected up and wound up the Celery-Cola Company. (Copy of a letter written from Nashville, Tennessee, dated August 13th, 1903, handed to witness.) I, of course, do not recall the name of this party, or the town, but I did not stay on the road all the time and frequently when I would come back I would help in the office. It is possible I did write it. That is the letter-head or stationery used by our company at Birmingham, Alabama. We wound up the affairs of the Birmingham branch of the Celery-Cola Company about 1910. All the accounts that were there. It was my principal duty to see if we could not collect up just as many of these accounts as we could. I do not remember what month. After that I worked as advertising man for the Jefferson Theater. When I wound up the affairs of the Celery-Cola Company, I did not have anything to do, up to now with the soft drink business. **[1118]** First I was advertising agent for the theater and then I went into the whiskey business. The Koke Company of America are manufacturing Koke and Dope, too. I do not know as it is the same drink. I am not connected with either. I did not say anything about the firm of Mayfield & Mayfield. My father wanted the trademark for the word Dope, and knowing it to be extensively advertised and a good demand for it, and

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when he got ready to buy it I figured to take a piece of it, to take a half interest with him. The firm of Mayfield & Mayfield was organized. My father wanted it and I said well, I will buy in with you. This Dope is the product that was in fact manufactured by the Birmingham Bottling Company of Birmingham. That was a bottled product and sold around Birmingham, and is still sold there so far as I know. They had some sale on the road, too. Dope is sold on the market in Birmingham and made by the Birmingham Bottling Works. The firm of Mayfield & Mayfield did not do any business. I practically immediately transferred my interest to my father. My father, I suppose owns the actual trademark, he started to manufacturing and selling Dope. I do not know what the trademark sold for or what the firm of Mayfield & Mayfield got. They got the trademark and goodwill and all the machinery that was necessary to use in manufacturing the product Dope and a list of customers. I think it was $275.00 my father gave me for my half interest. The check was made by the Koke Company. I turned it all over to him, I turned over the accounts that I testified to this morning and the machinery, appliances, etc., they are subject to the orders of the Koke Company of America. I disclosed the formula too, to them, to my father as president. I could not detect any appreciable difference between the formulas. I could not swear they were absolutely the same thing but to the best of my knowledge they are the same thing. I have

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not got the list of customers that I let go, but my father will get them.

Mr. HIRSCH.—We would like to have this witness produce them. They are in your possession.

Mr. LITTLETON.—We will produce them if they will bring them up. I did **[1119]** not collect any money from that list. It is just a list of customers and some amounts that were due. I do not remember just what they were. The list of names were primarily in use as a mailing list. I do not know the number, I imagine in the neighborhood of two dozen, possibly something like that. I got open accounts from the Birmingham Bottling Company. I did not collect anything. This machinery, this barrel and paddle and these percolators, I had no occasion to use them. They have never been used to my knowledge since acquiring them. They are still down there in the Birmingham Bottling Company's plant in Birmingham, stored there subject to my request or my order. I bought them because it went with the business, the goodwill and trademark, that was necessary in order to acquire a full title to the trademark. The day may come when I would want to use it and I wanted everything I could get for my money.

Deposition of Alphonse Goldsmith, for Defendants.

ALPHONSE GOLDSMITH.

Direct Examination.

Age thirty. Live in New Orleans. Engaged in the advertising business. Have been in that busi-

(Deposition of Alphonse Goldsmith.)

ness about eight years. The nature of my business is selling advertising specialties, signs and everything pertaining to advertising. I am connected with the Greenduck Company of Chicago, the Cross Press & Sign Company of Chicago, the Baltimore Sign Company of Baltimore, the Southard Novelty Company of Columbus, Ohio; those are the principal companies but I take orders for other companies also. My position is selling representative. I am a free lance, go wherever I want to. I cover Louisiana, Mississippi, Alabama, Georgia, a little of South Carolina and a little of Florida. In my travels about the country I have seen advertising of the product called Koke. I have seen indoor and outdoor signs, caps, wagon umbrellas, as far as I can remember. These signs had on them besides the word Koke, I remember Delicious, Refreshing, at founts, 5 cents, in bottles 5 cents. I have seen advertising of Dope, that was the same thing as Koke, indoor and outdoor, general advertising. I have seen it scattered throughout the South. I remember particularly seeing some in Birmingham. I have **[1120]** seen some in Montgomery, I think I remember seeing some in Jackson, Mississippi, you see scattered generally throughout the South. I do not remember the exact locations. I can remember seeing it back a few years. I have placed advertising for the Southern Koke Company, Limited, of New Orleans. I placed some last year and some this year, consisting of caps, wagon umbrellas, calendars, indoor signs, outdoor signs, metal

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and paraffine cardboard. He placed considerable advertising with me. I guess it would run about 25,000 pieces.

Cross-examination.

I have no copies with me I have put out. I guess the factories have some samples, Cross Press & Sign Company. Orders in the last few years for Koke amount, I guess, to a couple of hundred dollars, with the Cross Press & Sign Company, and with the Troy Carriage and Sun Shade Company, something over one hundred dollars. The Southwark Novelty Company, I guess, it would run a couple of hundred, two hundred or so dollars. The Baltimore Sign Company would run a couple of hundred dollars, too. The Greenduck, I have not sold any recently, and I cannot approximate that. It is possible I never sold them any from the Greenduck. If I did, it was some time back, and then I have sold some other stuff from time to time from some other concerns. I sold some stuff I had printed right here. I had it printed myself from cuts that I furnished myself, by the De Luxe Press. The orders from that press will run as high as $125 or $130, something like that. That was not letterheads and envelopes, that was advertising. I have samples at my office. I will bring those over.

Mr. HIRSCH.—Let the witness go and get them, will you, we want to cross-examine him on them.

Mr LITTLETON.—All right.

Mr. HIRSCH.—Bring everything you have got, including your order blanks.

I do not know whether I have the order blanks, but

(Deposition of Alphonse Goldsmith.)

whatever I have got I will bring. That is all I was able to gather together at the office. None of these was printed by the De Luxe Press printing company. I have no connection with them, but I have them do my printing. I have no office with them. I have not tried to get anything from the De Luxe Press, specimens. I **[1121]** will get specimens of matter printed by the De Luxe Press, printed for the Southern Koke Company, Limited, and produce it. These three signs and copy are all I am able to find at my office. The red tin sign (mark "A") was made, my recollection is, the latter part of last year, 1914. That was made in Canisteo, New York, by the Up-to-date Advertising Company. I do not remember how many I made, some for Dope and some for Koke, some in red and some in blue. I guess about five thousand. I guess they were about one hundred and fifty or one and seventy-five dollars, something around there. They were shipped direct to the Southern Koke Company here in New Orleans. I do not know what happened to them after they were delivered to the Southern Koke Company. I have seen them out, I think I have seen some in New Orleans. I think I have seen some in other places; I don't remember where. Sign marked "B," that was made by the Baltimore Sign Company, I cannot say exactly when. I had their accounts for two years, and that was made before I took on their account, because that was one they sent advising me of having made it for him. They asked me to get another order. I did not get one, but got another. I have

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never taken an order from the Southern Koke Company for "B", it was before my connection with them, before two years ago. The sign marked "C," the Baltimore Sign Company made these, the early part of this year, 1,000 Koke and 1,000 Dope were delivered, 2,000 in all. They cost twenty dollars, delivered to the Southern Koke Company. I do not know whether they were put up or not. I do not recollect ever seeing one of them up. The cap marked "D," was made by the Southwark Novelty Company, about a year ago. About a thousand were made. I guess they cost about thirty-seven and a half dollars. I delivered them to the Southern Koke Company. I have seen some of them; I imagine they were used. I have seen some up in Montgomery, Birmingham, Jackson. Teamsters and warehousemen were wearing them. In Jackson I remember seeing some indoor and outdoor signs, among others the celluloid signs I referred to, some drug-store up there [1122] in Jackson had it. I do not remember this one. It was about a year or so ago. I have seen some wagon umbrellas of the Southern Koke Company. I took the order. I do not know exactly how many; I expect something over 100. I imagine they were distributed. I saw them on some wagons. I guess they cost about a dollar and a quarter apiece. They had the word Koke on them, the trademark name, the same as the sign I have produced. I do not remember as I ever seen a diamond shaped sign with the word Koke in the middle and Delicious, Refreshing, at founts 5 cents, the

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Koke being in script, in red, nor any round disk celluloid signs, with Koke in script in red letters, I think it will amount to over $850, this advertising, because some other stuff that I cannot remember just now, but I have been getting their business right along, quite a bit of it. I am pretty sure it would exceed a thousand dollars. How much more would be a hard matter for me to say. The amount they spent with me in advertising would be about $1200, back to about a year and a half ago. I first heard of this word Koke five or six years back. It was applied to the soft drink Koke. I ran across it in my travels five or six years ago. I do not remember where, that far back, but I remember the words Koke and Dope. I imagine they were different drinks. I imagine it was the product of the Southern Koke Company. I do not know when the Southern Koke Company was organized. I have heard the words Kope and Dope, I know, prior to 1913; but I do not know whether it was the Southern Koke Company or who made it, but I heard the word. I do not know whether it was a nickname or not, but it was a drink. I first heard of Coca-Cola about the same time, seven or eight years ago. I do not think I ever heard the word Koke or Dope used as a nickname for Coca-Cola. Mr. Mayfield gave me these contracts for advertising. I have been soliciting his business, he never gave me enough. He gave me no reason why he did not give me any more. I know there was considerable business placed that I did not get, but I got my share, I reckon. I had drawings made and

(Deposition of Alphonse Goldsmith.)

submitted them [1123] to Mr. Mayfield. The factory supplied the cuts or drawings. In soliciting these orders we usually get the trademarks and things and send them to the factories to fix, have designs made up and sent back and use them as suggestions for business. Mr. Mayfield always gave me the trademark, letter-heads and one thing and another. He gave me that celluloid sign, if I remember correctly, that was the basis on which we drew up the metal sign. That is the oldest sign, that celluloid sign, the oldest I can remember. The Southern Koke Company have used blotters, practically the same design as the others. I think there was some wording, I do not remember—Delicious and Refreshing, I was of the impression was on the sign, but it is not on this particular sign. Those words "Delicious" and "Refreshing" I see on almost all of them. I have seen it on Coca-Cola. If I remember correctly I am getting up a sign now with Delicious and Refreshing, an exhilarating drink, as a matter of fact I think I am getting up two different signs for them. They are celery drinks. I do not think I have the right to betray the confidence, the man does not want his advertising campaign distributed around. I have seen some calendars of the Southern Koke Company hanging up in bottlers', I believe I have seen some in Jackson, Mississippi,. A bottler in Jackson, Mississippi I think has one of these Koke or Dope calendars. I saw one about the spring of last year. I have seen it very frequently around, where I have gone in my travels. I call in my travels on all bot-

(Deposition of Alphonse Goldsmith.)

tlers and soft drink establishments as they all spend quite a bit of money in advertising. Advertising of the Southern Koke Company, Koke and Dope, I have seen in soda-fountains, on fences, on wagons and in bottlers' places. I saw it out in Georgia on a fence, somewhere about the center of Georgia, Albany or Americus, last summer, I do not know the exact point. I have seen many signs distributed around, I never take any special note of it or where I seen them. I have seen some tacked up, some hanging, indoor signs, hanging on walls, on tacks and some mirrors. I have seen a number of them around the city here and [1124] Mobile. I make Mobile six or seven times a year and I have seen it several times, some last year and some before, all around the territory. I did not take any particular memoranda or note of it, I just remember seeing it. Some wagons are here with umbrellas on. That is what I mean when I say I saw it on the wagons. I have seen advertising generally scattered over the States. I cannot designate any particular place because I did not take any particular note. I have covered Mississippi, Louisiana, Georgia, a little of South Carolina and a little bit of Florida, and I remember seeing it but I do not remember any specific place. It was within the last two or three years, that I have noticed it. The last two years positively, I can remember, because it made an impression on me. I cannot say exactly where I have seen it in 1913, I have seen it in the country. The year 1914, I have seen it in Jackson. I have seen hangers there, also, some

(Deposition of Alphonse Goldsmith.)

drug-store, some soft drink establishment, some little booth of some sort. I have seen it in some places in Louisiana if I remember exactly, I have seen it in Alexandria, Shreveport, and Monroe, or somewhere in that territory. I have seen it in bottlers' places, I have seen them on fences also. I could not give you the names and give it to you positively, because I do not know. I heard the words Koke and Dope five or six years ago through the territory I have visited, the people at soda-fountains asking for Koke, and Dope. I cannot remember that far back having seen signs advertising Koke and Dope. I remember I have seen them. I cannot remember whether it was five or six years ago, but I do not know that I have. I am sure I heard the words five or six years ago, in connection with a soft drink. The drink was called Koke and Dope. I always understood it to be a soft drink, just a soft drink with that name to it, called Koke and Dope. That was my impression. In the territory I have covered, Mississippi, Louisiana and Alabama, I think there was a drink on the market then, Koke and Dope, that had the name on the label, that was my impression. I do not know who made that drink. I do not remember ever having seen a bottle, but [1125] simply called for the drinks. I have heard people ask for Koke and Dope five or six years ago, and I got that impression that Koke or Dope was on the market. I got the impression from hearing people ask for it. I have seen recent advertising of the Coca-Cola Company, "Ask for it by its full name, nicknames encourage substi-

(Deposition of Alphonse Goldsmith.)

tution," I have noticed that recently. I never thought of what nicknames are referred to in that advertisement. I imagined Cola drinks in general. I do not know what nicknames are referred to. I drink sofe drinks once in a while at soda-fountains. I have heard some ask for Koke and Dope. I hear it generally but do not pay any attention to it. I have not paid any attention to this Koke and Dope proposition except with reference to the advertising, in connection with it since 1913. I get orders from the Southern Koke Company, Limited. I did not get any from the Koke Company of Dallas. I do not go to Dallas or up in Missouri at all. That is the only Koke Company I know. The stuff I have sold was shipped right here. I do not know anything about the Koke Company of America. I do not make Chattanooga. I drink Coca-Cola. I ask for Coca-Cola when I want Coca-Cola. I have never asked for Coca-Cola under the name of Koke or Dope.

Redirect Examination.

I have gone into a soda-fountain and asked for a Koke or a Dope. I have expected to get when I asked for that a Koke or Dope.

Recross-examination.

I expected to get when I asked for Koke or Dope, the Southern Koke Company's drink. I never asked for it except since I have known that concern. I have known them for several years, the Koke Company. I have seen the sign, I feel reasonably sure I have seen the sign since three years ago. I never used the term Koke and Dope before three years ago

(Deposition of Alphonse Goldsmith.)

that I remember. I bought the umbrellas from the Tryon Carriage and Sun Shade Company. This Up-to-Date Advertising concern was at Canisteo, New York.

Mr. LITTLETON.—We offer and tender in evidence Exhibit #33, which is spoken of in the cross-examination of the witness as "A," and Exhibit #34, the sign spoken of in the cross-examination as Exhibit "B," and as Exhibit #35, the sign spoken of in the cross-examination as Exhibit "C," and as Exhibit #36, [1126] the cap spoken of in the cross-examination as Exhibit "D," as evidence on behalf of the defendants in the above-entitled causes. These cards or hangers with the word Dope on them was the trademark name, given to me on the letter-head, and I simply copied it. If you call this imitation handwriting, it was on the same order, the same character of lettering. In every instance I remember that orders were divided, some for Koke and some for Dope. I thought it was two different drinks.

Redirect Examination.

I do not keep samples of all advertising I place orders for.

Deposition of J. A. Bermudez, for Defendants.

J. A. BERMUDEZ, a witness produced on behalf of the defendants.

Direct Examination.

Age 55, engaged in the carbonating-water business, bottling business.The name of my concern is Cres-

(Deposition of J. A. Bermudez.)

cent City Seltzer and Mineral Waters Company. That is one of the defendants in this case. I live at 1406 Esplanade Avenue, New Orleans; lived there all my life. I am a chemist, graduated at Tulane. I have known of the caramel coloring ever since I have been in the drug business, that is about 1876 or '77. I was with, in 1876 or '77, P. L. Quisacks, 37 Royal Street. He used caramel at that time for all soda-fountain syrups. Mostly all soda-fountain syrups are colored with caramel, take sarsaparilla, vanilla and banana, most all colored syrups are made from straw-colored, you know, to a dark brown or black. Quisack's got out a beverage which is sold through the fountain as Mead. That is put up by McClasky, that has been on the market here a long time, prior to 1877. The formula I have, which is supposed to be an imitation of it, is about the same coloring and is colored with caramel. It cannot be colored with anything else because at that time aniline dyes were not known on the market, that they use to-day. They used caramel coloring to color these different soft drinks at that time. First it gives you a body and gives it appearance, the same as it is put in sarsaparilla syrup to give it a body. I have been connected with the Crescent City Seltzer & Mineral Waters Company about nineteen years, I think. That concern commenced to bottle Koke somewhere [1127] about two years ago, I think, 1913. We bought the syrup from the Southern Koke Company and bottled the stuff. We always bottle Koke in only splits (a bottle mark, #37.) That is one of the bottles. (Defendants' Ex-

(Deposition of J. A. Bermudez.)

hibit #38) that is another kind of bottle in which I have bottled Koke. (Defendants' Exhibit #39) that is another bottle in which I bottle Koke. (Defendants' Exhibit #40) that is another bottle in which I bottled Koke. (Defendants' Exhibit #41) that is the crown that I put on those bottles. I have not bottled it in any other kind of bottle, but splits bottles like those. That is what we call splits bottles. We get them from the bottle dealers, these junk bottle dealers, we buy them from. Junk bottles, we call junk bottles, we have been using always second-hand bottles. We always put labels on the bottles from the time we began to bottle it. At first we had another label, that is the new label; a sort of bluish label, similar shade to that. We used that blue label, I think it must have been three or four months, I do not exactly remember. That is the new label, the yellow label. (Defendants' Exhibit #39.) That is the label that we changed to. We made the change because the Southern Koke Company sent the label out. We scratched all the labels off the other bottles and put those on and destroyed whatever labels we had or sent them back to them. I do not remember, because we sent them back. We have got a good lot of those, of the others we had only a few. In other words, we quit using the other label after that, and continued using the label on the bottle marked Exhibit #39. That is the only label we had after that. We quit bottling Koke about March or April of last year, right after the Crescent City Seltzer & Mineral Waters Company was sued along with the Southern

(Deposition of J. A. Bermudez.)

Koke Company, Limited. We had some of those diamond signs of the Southern Koke Company, Limited, and I had instructions from the president to see that every wagon was covered with those before the wagon went out, it was done every afternoon by the shop hand. We had some other signs, some umbrellas, and we put them on our wagons. We had some of these little celluloid signs, some calendars, and oh, different things like that, and [1128] blotters lots of them. We gave the advertising to the drivers to distribute amongst our customers, the drivers do the distributing, we do not. Our advertisements consisted principally in decorating those wagons with signs. I have no doubt but what our drivers distributed this advertising matter to our customers over town, I suppose they did.

Cross-examination.

I have made caramel. Caramel will produce different colors, from a very light shade to a very dark shade, light straw and black. That is done by the addition of more or less. Caramel is used for coloring. It is used to produce color, that is the reason it is used in these drinks. Our concern commenced bottling Koke about 1913, I suppose. I saw the contract that was entered into by our concern and the Southern Koke Company, whereby we obtained the rights to bottle Koke. I do not remember whether that contract contained a clause guaranteeing to protect us if suit should be brought against us. Mr. Gillian can tell you more fully about that. He is manager, I am only the secretary. We changed

(Deposition of J. A. Bermudez.)

from these bluish labels to these labels as shown on Exhibit #38, about three or four, maybe five months after we got the other labels, the first labels, I do not remember that, that is all we have down there. We used the bluish labels three or four months. We have not got the bluish labels yet. Those we had we destroyed, and got the new ones, they were furnished us with instructions to scratch off the other label and put this label on. I can tell you about the time we made the change, to the best of my knowledge, and the reason we made the change, the Southern Koke Company sent us a different label. As far as I can remember, it seems to me that I have seen that name Koke by circulars, we generally receive in the office from all the manufacturers of soft drinks like that. In bottlers' papers like that, and samples, I cannot state exactly where I have seen it but I have seen the name. I have not heard it used at all at soda-fountains. I do not go to soda-fountains. I have not heard the expression Dope used, relating to drinks. We discontinued the bottlers' papers for about two years. I saw the word [1129] Koke in bottlers' papers or some circulars I get for different kinds of drinks, for instance, we have different kinds of grape juices, we get the circulars offering us the privilege to bottle the product, the same as we bottle any other syrup, soft syrup. I have taken so little interest in them that I do not think I could very well tell you exactly the time I saw the first advertisement of Koke. I have known it for some time, though. I did not see any of these signs put up, I do not go out.

(Deposition of J. A. Bermudez.)

My business is in the office and yard. I have plenty of the advertisements and signs at the office. I will send them up here. I have got the blotters and I will bring them, whatever I have advertising Koke. I have only had those since I started bottling this product. We are not bottling it now. For Koke we got seventy cents a case. We never sold for less than 70¢. We never bottled a product called Dope, just Koke. We sold from two hundred to two hundred fifty gallons of Koke, fifteen and twenty cases per day. They fluctuate, sometimes we have a driver that will not sell a penny, and another fellow will sell it all. My partner first interested me to take up the proposition with the Southern Koke Company, Limited, of bottling this product. I do not know anything about that at all.

Redirect Examination.

It seems if you put a certain quantity of caramel coloring it does give a flavor. I know I have tried it myself. Just enough to make a drink a light straw color, about the color of ginger-ale, would not add a flavor. If you make it a dark color, the color of Koke, that would add a sarsaparilla flavor. Sarsaparilla looks like Coca-Cola.

Recross-examination.

A large amount of coloring matter is put in a drink like this Koke. I could not tell the difference by taste of this product Koke, with caramel and without caramel. I do not know whether there would be any difference in taste or not. I do not care to express an opinion about that. I am not an expert in

(Deposition of J. A. Bermudez.)

that line. I think if you add a very large amount of coloring in any drink, there would be a difference, and if there is a small amount of coloring there would not be any difference. [1130] I have tried it myself.

Redirect Examination.

Caramel coloring used to color Koke adds body to the drink; it makes it heavier, the syrup is heavier, thicker, denser.

Recross-examination.

Sugar, by itself would do the same thing. The purpose of adding caramel to these drinks is to give color. That is what it is used for, to give it the burnt sugar color. Introduce these exhibits, Defendants' Exhibits #37, #38, #39, #40 and #41, to the testimony of Mr. Bermudez, to be used as evidence on behalf of the defendants in the above-entitled causes.

Deposition of Patrick J. Gillian, for Defendants.

PATRICK J. GILLIAN, a witness produced on behalf of the defendants.

Direct Examination.

Age sixty-nine, live 1126 Royal Street, New Orleans; lived here all my life, about forty-four years now. Engaged in manufacturing seltzer and mineral waters. The name of our concern is Crescent City Seltzer & Mineral Waters Company. I have been connected with that concern since '76, it is about forty—forty-seven or eight years. It has always been known since I have been there as the Crescent City Seltzer & Mineral Waters Company. I bottled a beverage called sarsaparilla. I know

(Deposition of Patrick J. Gillian.)
that all the time in the Crescent City Seltzer & Mineral Waters Company we bottled sarsaparilla. Before that time I was only in the seltzer water business, in my own factory. We colored sarsaparilla with sugar coloring, caramel coloring, sarsaparilla coloring should be the same color all the time. Of course a workman, sometimes he is not careful, he may not make it, but it is supposed to be always the same color. I have seen Coca-Cola. It is pretty much the same as the sarsaparilla we made. I have heard that they made sarsaparilla in 1847, that was the first factory that was put up here, but I was not in the business at that time. Some of the other beverages that have been colored with caramel coloring since 1868, well, most any of the colored drinks, they are colored with it, I think. I think sarsaparilla is, the light coloring of ginger-ale, a light coloring of—oh, well, it is just to suit the drink, you know. I do not know of Moxie. I do not put any coloring to Creme soda. I could not tell about root beer. [1131] I bottled an extract known as Koke. I began to bottle it about a year and a half, or I think in a year and a half, altogether. I got that syrup from this Mayfield firm, the Koke Company, the Southern Koke Company, Limited, of New Orleans. They gave us advertising matter. I am sure it was distributed, because I covered the wagons all over, it is better than distributing it, it covers the wagon all over with it, and wherever the wagon went it was advertising. I think advertising matter was given out to the dealers. I am not sure of that because we had the ad-

(Deposition of Patrick J. Gillian.)

vertising matter there, umbrellas, caps and all that kind of thing. I cannot remember whether we gave it to the customers or not, but I believe we did. Our company never sold Koke to our dealers as and for Coca-Cola, not as I know of. The company did not do it, the driver might say it is as good and the Coca-Cola Company say mine is better, and the driver say the Koke is better. I suppose so, but I did not hear them say, but that is about the way the drivers do.

Cross-examination.

I think I have the contract that was entered into between our company and the Southern Koke Company for the bottling of this product Koke. I think I can find it. I will send it up if I can find it. I cannot remember anything in it; I do not know whether I have it or not now, I will tell you, but I did have an agreement, but I do not know if I can find where the copy of it is now. I cannot remember that that agreement had in it any stipulation as to the defense that the Southern Koke Company would put up if someone would bring suit against us for using the name Koke. I did not require or request that that be put in there. I think that I asked this question, whether that would get us into any trouble by selling this Koke. I think I asked one of those questions. I am sure I never would have filled a bottle with it if I thought I was doing anything wrong. When anyone comes in I ask the same question, because I do not know who I am dealing with first, and I want to know whether I have a right to bottle it at any time. I cannot remember at the time

(Deposition of Patrick J. Gillian.)

we were talking about entering into this contract about any questions in regard to the names Coca-Cola and Koke. [1132] I had heard the name Koke before this contract was offered to us. There was mail forwarded to the office which offered it to me some months before that. I heard it from drummers coming in about the Koke Companies. I could not tell how long. I have heard of both Koke and Dope and heard of Coca-Cola, also. Have heard Koke and Dope applied to Coca-Cola. Drummers coming from one State and another, I have heard them speak about Coca-Cola, and Dope and Koke and all that. I did not take any interest in that. I have not heard Coca-Cola calle Dope and Koke, because I know that Coca-Cola and Dope is not the same thing. I know very well sarsaparilla and Coca-Cola is not the same. I have never drank a bottle of either one, Koke or Coca-Cola. I drink whiskey. If I can find that contract I will bring it but I am not sure because I have got papers in my pocket now, and I will take them out and put them in the desk this evening and a day or two afterwards the children have been around there and they clear my papers, first one place and another. I sometimes have a good deal of trouble. Now, that paper, like Koke and Dope and that sort of thing, I give very little attention to that because I never cared to sell a drink, only what I manufacture myself. It seems to me that if I did not have the right to use Koke, if I had known about this matter I could have hunted up that paper and told you to the point, but I tell you I cannot remem-

(Deposition of Patrick J. Gillian.)

ber all these things as my memory is not as good, and I have been sick, and I do not want to say anything for another, I want to be very sure. I saw my attorney about that contract. He saw it. I do not know how much my attorney examined it. He attends to all my business.

Mr. HIRSCH.—I will reserve further cross-examination until I see the paper.

Deposition of A. C. Juhl, for Defendants.

A. C. JUHL, a witness on behalf of the defendants.

Direct Examination.

Age, forty-three; live New Orleans; lived here a little over a year. Engaged in advertising specialties. The name of my concern is Crescent Advertising Novelties Company. I lived before I came south in Jersey City, New Jersey, and New York. I heard of a product up there known as Koke, just about the Spanish-American war, '98, when we were loafing in Jersey City. I was a member of the Palmer Club, [1133] and we were joking about what kind of stuff that was, we thought it was some kind of Dope. I understood that the factory was down on a street near Washington Street, the other side of the Post Office. I never went there personally to look at it. My occupation at that time was electrical work, doing work for the Government, transport service. Since I have come to New Orleans and gotten into the advertising business, I have had occasion to do advertising for the Southern

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(Deposition of A. C. Juhl.)

Koke Company, Limited. On three different occasions, calendar orders for two and the third order was an order for hangers. I also made a design for Mr. Mayfield on another order. Those hangers were imported hangers, with different pictures of women, with the different names of Koke on it; they were to be used at a fair somewhere in Florida. (Calendar marked Exhibit #42.) That is a sample of one of the calendars I got up and delivered to the Southern Koke Company, Limited. Thirty-one hundred or thirty-two hundred of them. I have not any of the other hangers, copies of the other hanger, or any of that advertising I have done for them. Nothing except that sketch there which I designed. I delivered them in full, that I printed, and kept it because I wanted it to check proofs on them. I have seen Koke advertising around New Orleans, aprons, caps, large umbrellas, wagon umbrellas, and hangers.

Cross-examination.

I lived in Jersey City right back of the courthouse on Pavonia Avenue; I could not remember the number; it is right back of the courthouse. I lived in West Hoboken and Jersey City about fifteen or sixteen years. I heard of the product Koke 1898 and '99, during the Spanish American War. I could not give the exact date. Somewhere around there because I was in the transport service. I did not know Mr. Mayfield at that time. We knew there was a new enterprise there, we were members of the Palmer Club and knew what was going on in town. I believe the Palmer Club is in existence. I do not

(Deposition of A. C. Juhl.)

know the name of the concern that manufactured it. We wondered what kind of stuff that was, that is like you will discuss matters in a little town like [1134] Jersey City. I never drank it. We just heard of it as Koke; I did not see any advertising there, just heard of it. I do not remember the name of the concern, if I knew it I would not remember. I never knew the name of the concern. I knew it was a new enterprise. We thought it was such a funny name, Koke. If we knew what Koke was, everybody knew what koke fiends are, that is what caused us to wonder. That was the impression. I made up the calendars for the Koke Company sometime in either last October or November, 1914, of this last year and this last order was taken February, 1915, and delivered just about a week or ten days ago. The hangers were made before that, must have been about the 4*rd* of October, some months ago, and he gave me that. However, it was a personal thing, and he used it for a fair. For some fair down in Florida. They have been shipped. That was October, 1914, somewhere around there. That was the company's check made to me personally; it was not a company order; it was some stuff I had. I had those designs I have made up. This has not come out. I have not done anything with them. I just got the price from the factory yesterday. The backs of the calendars were manufactured in Philadelphia; we did the printing here, and put the pads on. Ketterlinos Lithographing Company of Philadelphia made the backs. They made

(Deposition of A. C. Juhl.)

the last ones. The first ones came from Germany, Bremen. The hangers that I got out in the early part of October, 1914, were printed by Alkirk & Selden. The design I bought them here from a man named Durper. These advertisements I refer to, I have seen boys wearing the caps, and I have seen lots of laborers, drivers and porters with them, and in Mr. Mayfield's place I have seen bottles there, with the name Koke right across it, and his product there. The calendar printing was done here. Mr. Mayfield supplied the copy for that printing. He told me what to print on the calendar, that is customary for the customer to tell you what he wants printed and how and I worked it up. Mr. Mayfield had the initiative, the final say. Mr. J. C. Mayfield, Sr., that is the one I did business with. The gentlemen [1135] at the Palmer Club that I discussed this matter with, two are dead, one George Williams, I do not know what has become of him. I do not know who else, all the boys have left town. George Williams is somewhere down in South America. I could not tell you the street of the Palmer Club. I think since I left they consolidated with the club on the hill. I think the club, the Palmer Club, was taken in by the club on the Boulevard, on the hill. Everybody knows the name of the club on the hill, I think it is on Coleman Avenue; everybody knows it there.

Redirect Examination.

I have not paid much attention to the advertising of the Southern Koke Company. I suppose I could go out and pick up a dozen of them, I do not remem-

(Deposition of A. C. Juhl.)

ber just now where. I can direct you to one place within two or three blocks of here where you will see two bottles standing behind the bar. I heard of Coca-Cola around Christmas, 1905 or 1906. I was at the Biedmont Hotel, and, well, I happened to hear about it there. I never paid any attention to it, to the concern, about the fortune the man had made and the small sum, I always understood, though rumor had it that he paid some small sum, and if memory serves me right he paid six hundred dollars for it and made a fortune out of it. I had not heard of it in 1898 in Jersey City. I had never known of any advertising of it up there at that time.

Mr. HIRSCH.—I move to strike that part of the answer which refers to the rumor as hearsay and incompetent evidence.

Objection overruled and appeal prayed and granted.

Mr. LITTLETON.—I tender and offer in evidence the calendar presented by the witness, as Defendants' Exhibit #42 in the above-entitled causes.

Deposition of James L. Wright, for Defendants.

JAMES L. WRIGHT.

Direct Examination.

Age, thirty-three; live New Orleans; lived here six years. I am secretary and treasurer of the Pan-American Life Insurance Company, and also the quartermaster-general of this state, of the National Guard. I have held the position with the insurance company since it was organized in April, 1911. I

(Deposition of James L. Wright.)

was connected with the Southern Koke Company, Limited, of New Orleans. It will be a rather historical sketch. My father-in-law, Mr. E. M. Boyd, of Dallas, was connected with the Koke Company of [1136] Texas at Dallas. I think he was vice-president and general manager. Mr. McCarty Moore was the president. Mr. Boyd had charge of the sales and the office there in Texas, having been a traveling salesman practically all his life. The Koke Company of Texas had been rather successful and they decided that New Orleans would be an advantageous place to locate a similar establishment for the trade down in Louisiana and Mississippi. They made some arrangement with Mr. Mayfield, president of the Koke Company of America, for this territory, and Mr. L. S. Scott was interested in the proposition by them, and put up a good sum of money; I do not know just what his investment was, becoming the secretary and treasurer and the general manager of the Southern Koke Company. At the time the company was organized, Mr. Moore came to New Orleans, I think it was in the latter part of 1911, to complete the organization, having secured a charter and by-laws and the necessary legal formalities. They held a meeting in my office at which Moore was formally installed as president, I as vice-president, for the purpose of completing the organization, and Mr. Scott as secretary-treasurer. I think Mr. Boyd and Mr. Mayfield were both put on the board of directors, but I do not remember that there were any other officials named under the char-

(Deposition of James L. Wright.)

ter and by-laws. The Southern Koke Company, Limited, was organized about 1911. That is my recollection of the time. I think it was the same year; it was the fall of the same year our insurance company was organized, and that was 1911. I was simply—you might say a dummy director, put in for the purpose of completing the organization and Mr. Boyd and Mr. Moore seemed to think they were under some obligation to me, so each one of them transferred from his common stock, two hundred fifty shares of stock into my name, a total of twenty-five hundred shares, to which I attach very little value, if any. At that time, Mr. Scott had the active charge of the affairs of the Southern Koke Company. I have known Scott ever since I came to Louisiana. I was located at Crowley for several years in the rice business before I came to New Orleans, [1137] where I first knew Scott as a newspaper man, and when I first went to Crowley, Scott had the reputation of being a drinker, and he apparently reformed and for a period of some three or four years he went along without drinking at all. Several of us up there at Crowley became interested in the Antigua Gold & Copper Company which owns a mining property in Honduras, in which Scott had invested considerable money, and that was one of the primary causes of my coming to New Orleans, to look after the interests of the people who had put their money into the proposition. Scott went along for quite a while without drinking, but when we began to have financial difficulties with the mining proposition he

fell off the water wagon pretty hard, and then for a period of almost four years he was drinking off and on all the time. Scott left New Orleans when we had to suspend operations of the mining property on account of the lack of capital and went out to Mexico where he made considerable investments. He was a fellow of considerable means, but I think his Mexican investments did not prove very satisfactory and he came back to New Orleans in the summer of 1911, if I have my year correct, to go into this Koke proposition, regarding which he had had some correspondence with Moore at Dallas and for a little, he was sober, I should say for a period of five or six months, then he began to drink constantly. There was hardly a month that passed that he was not drunk several days at a time, in fact, it gradually got worse, that is the reason of my becoming the president of the Koke Company, his constant drinking made it impossible for him to attend to business. I later become president of the Koke Company. Scott began to drink so heavily that at the suggestion and request of Mr. Boyd and Mr. Moore I was elected president of the company so as to exercise some control over the business, particularly the bank account. When Scott was sober he was one of the most economical men I ever saw in my life, but when he got drunk he spent money like water, and apparently when he was drunk, he did not know what he was doing. Anyway, he would draw out [1138] every dollar he had in his own bank account and then he would draw Koke Company's checks. So I took the

(Deposition of James L. Wright.)

presidency for a short time, until some change could be made in the management of the old company, to protect Moore and Boyd and also Mr. Mayfield. During by connection with the company, I did not know of any employee there that had a mustache, a little black mustache. Scott had a stubby red mustache part of the time, but my recollection is Scott was clean shaven most of the time during the last few years of his life, if not entirely so. Scott was killed in a street-car accident in April or May, 1913, here in New Orleans. A man by the name of I. A. Whittle never worked for the company that I know of; that man Whittle, during the time that we had practically taken the management out of Scott's hands, and had placed local man named William Dalton, in charge, came into the office if I remember the statement made to me, correctly, accompanied by a man named Cheevers and bought a few shares of stock. Then, a few days later on he went back to the Koke Company's office and demanded a list of their customers, which Dalton refused, and he stated that he had been advised by his attorneys that he had the right of access to the books, so Dalton brought him up to see me. I questioned him fully and found out he was a bartender in some little up-town saloon and I was not entirely satisfied with the manner in which he conducted himself in my office and after cussing him out I ordered him out of the place. However, I advised Dalton that rather than have any trouble with him the best thing to do was to give him back his money and I believe that was done, al-

(Deposition of James L. Wright.)

though I do not know such to be the case. I had absolutely no connection with the active management of the business at all, and had no dealings with the salesman, except to call the men off the road when Mr. Scott was killed, but my understanding of the instructions which were given to them by Mr. Scott and others connected with the company in Texas, were that they were to sell this Koke on its own merits. My understanding of the adoption of the word Koke was that there were frequent demands, or calls rather on the part of buyers of the various soft drinks for Koke and Dope [1139] and similar terms and that the word Koke was adopted to take advantage of that demand. That was my understanding of the adoption of the word. I was told that the word had been copyrighted by a manufacturer of a similar soft drink in Tennessee or Kentucky up there somewhere, and this copyright on the name was purchased by Mr. Mayfield or his associates. That is all hearsay so far as I am concerned, in fact I do not really remember who made the statements to me.

Mr. LITTLETON.—We object to that part of the evidence and move to strike it out on the ground that it is hearsay.

Objection overruled and appeal prayed and granted.

I am not connected in any way with the Southern Koke Company, Limited, now. I ceased my connection shortly after Scott's death, the object for which I was asked to temporarily become president was

(Deposition of James L. Wright.)

made unnecessary by Mr. Mayfield buying the Scott interest and taking charge of the business. My connection with the company was merely nominal. I had no active connection with the company at any other time. At the time of its organization, as I have already explained, I was simply used as a dummy officer or director to complete the organization and then when Scott began to drink I nominally took charge of the business until someone representing the other stockholders in the company could take charge of the business. During all the time I was connected with this Company I was carrying on my insurance business. I very seldom went to the Koke Company's office at all. They occasionally brought me a check to sign and that was about the extent of my active connection with the company. I believe I am a defendant in this case, I am not sure. I am nominally, like I was with the company.

Deposition of O. M. Anderson, for Defendants.

O. M. ANDERSON, a witness produced on behalf of the defendants.

Direct Examination.

Age, thirty years old; live New Orleans; engaged in Cooperage business, dealing in second-hand and new barrels. We handle all sorts, you might say, wine barrels, whiskey barrels, oil barrels, sugar barrels, flour barrels, soft drink barrels. We sold barrels to the Southern Koke Company, Limited, of New Orleans. We [1140] sell them all sorts, that are taken in at our place, all soft drink barrels we

(Deposition of O. M. Anderson.)

take in go to the Southern Koke Company and they are the only people we sell them to. The whiskey barrel up to the early part of this year is worth $1.20; we have been letting the Southern Koke Company have the full barrels for 90 cents and the three-quarter barrels for 90 cents and the kegs for 50 cents. If a man putting up that syrup asked us for a barrel suitable for that purpose, it is the only one we would give. It is cheaper than any others you could get. Whiskey barrels, as I say, are higher priced, and wine barrels, and then the wine barrel may spoil your syrup. We class soft drink barrels as Coca-Cola barrels, to distinguish between the whiskey barrels, wine barrels or other tight barrels.

Cross-examination.

We classed them as Coca-Cola barrels for the purpose of distinguishing between wines, whiskies, etc. We did not class them as Koke barrels because the name that we got hold of is Coca-Cola. It may have been that the first barrels we got in that line were labeled Coca-Cola, and we called all the other syrup Coca-Cola, that is something you ask me to explain as I see it. That was before my time. I have been with the concern since last March, but I have been through the books and know the working of the concern since long before I knew it. They are all classed as Coca-Cola barrels, not necessarily red barrels, any sweet syrup barrel that comes in we class as Coca-Cola barrels. I could not say that any other syrup barrel where we received is different colored, but I do not know any sweet syrup barrel we get in

(Deposition of O. M. Anderson.)

suitable for the purpose of the Southern Koke Company, or anyone we sell, we would class as Coca-Cola barrels and send it up to them. Whenever we have fifteen or twenty we call them up and say we have so many full barrels, so many halves and so many kegs and can they take them all and we just send them up. They are all re-coopered before we send them. I mean by being re-coopered by driving up the hoops, the labels are destroyed; I know positively there has never a barrel left our place unless the labels were destroyed, the hoops redriven, tightened up. There is not a barrel that you pick [1141] up on the street that does not need it, and if we find any holes we make them tight. We do not clean the barrel by driving steam through it, that is all we do. A lot of these barrels have had Coca-Cola in them, it may be most of them, I could not say positively.

Deposition of J. W. Mayfield, for Defendants.

J. W. MAYFIELD, a witness on behalf of the defendants.

Direct Examination.

Age thirty-one. J. C. Mayfield is my father. I was born in Gainesville, Florida. I lived after that in Roanoke, Alabama until I was about five years old, then we moved to the springs, after a short time. I do not remember which springs they were and then we went over to Atlanta. We went to Atlanta about 1890, I guess, in either 1890 or '91. My earliest recollection of any business my father was engaged in was about 1890. It is just a slight re-

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membrance and I do not know whether he was in business in Roanoke or not, but I remember seeing his name there, later on in years. "Mayfield & Pitman," up there, a grocery and supply business. I went to Birmingham in 1898 or '9. I was in the syrup business then, making Koke, Celery-Cola, Pepsi-Nola and in the bottling business. I helped my father in that business. I did practically all the bottling after I learned how, and did a lot of mixing, painted the kegs and acted as shipping clerk. I painted the kegs red. I stayed in Birmingham in that business about a year and a half, then I made a trip over to Atlanta from there. We had some business over there and my father was going on up to Nashville and I went over to kind of look after things over there.

Q. 21. You mean you went over to look after selling Koke? A. Koke, yes and Celery-Cola.

Mr. HIRSCH.—I object to that question and answer as entirely leading.

Mr. LITTLETON.—The question is leading up to something else.

Objection overruled and appeal prayed and granted.

I stayed in Atlanta not over four or five months. While there I sold Koke and Celery-Cola. From Atlanta I went to Nashville. In the same line of business, all the way through, selling Koke and Celery-Cola. There was another one there at that time, we were making a pepsin drink, a different colored **[1142]** red drink. I stayed in

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Nashville and continued that business up until about 1903. From there I went to Saint Louis. We had the same line there and did a little business up there. When I was in Saint Louis we had a bottling plant. I worked in the bottling plant, worked in the laboratory and we had a soda-fountain at the Suburban Park, ran a soda-fountain business at Suburban Park, and sold Koke out there. That was 1903. We were manufacturing Koke in Saint Louis, too. From Saint Louis I came back to Birmingham and did the same thing I did in Saint Louis, we had an office there and I worked that office. We were making Koke, Celery-Cola and Pepsi-Nola, a general line of extracts, and then we were jobbing some goods there, vinegar. I stayed in Birmingham that time, about a year or so. At these different places, Birmingham, Nashville, Saint Louis, where we were engaged in the business of making and selling Koke and Celery-Cola and these different syrups the business was practically owned by my father, I think he had a couple of business associates. All the different times I was out in the territory working, selling goods, from Birmingham, I made a trip down thru Georgia and Alabama, I went to Florida and worked Florida, come back up to Savannah and caught a boat from there and went to New York, and Atlantic City. That was a business trip and pleasure trip combined, mostly business though. From there I came back to Birmingham. I was on the road at this time selling Koke, Celery-Cola, Pepsi-Nola. I stayed in

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Birmingham until about 1907. In 1907 I made a trip out to Dallas. I opened an office there, a laboratory. We had a big mail order business out there and I filled these orders for Koke, Celery-Cola and Pepsi-Nola. On that trip, I made a trip up through Oklahoma and got full of malaria and I had to come back east. I stayed in Dallas at that time in the office six or seven months. When I left there I did not leave anybody in charge. I just had to pull out and come away. When I came back east, I think I stayed in Birmingham a short while. After that, I went up and opened an office in Richmond, Virginia. Selling goods the same line, **[1143]** Koke and Celery-Cola. I think I stayed there about six or seven months and then come back to Nashville. I just worked the territory out of Nashville for a few months. After I left Nashville I went up to Indianapolis, Indiana and worked all that territory, northern territory, Indiana, Ohio and Michigan selling Koke and Celery-Cola. I stayed in Indianapolis about a year. After that I went back to Texas, to Dallas. Down there I was on the road selling goods from headquarters at Dallas. From there I went right on through to the east coast, and went up thru the Carolinas and Virginia. I have been on the road selling Koke for my father's business since about 1900. During all of that time I have sold Koke and Celery-Cola exclusively, only one time for about two months I carried Jersey Creme out of Dallas for a side-line. In a small way I have been on the road, well, I can

(Deposition of J. W. Mayfield.)

safely say for fourteen years I have been peddling Koke and Celery-Cola, that is the salesman's way of expressing the sale of his goods. I am selling Koke now, with the Southern Koke Company, Limited of New Orleans. I have been on the road since I was about 16. I worked Houston, Texas, opened a small laboratory out there and did business. I was in Houston about a year. I sold Koke out there.

Cross-examination.

Q. 84. You have not mentioned about being in Chicago; you were in Chicago during March and April, 1913, under the alias of Jerome Gibbons, and you were referred to as the "Coca-Cola King" and were lodging with a Mrs. Earl, or in her rooming-house at 147 Erie Street, and living there with a woman not your wife, and with that woman you said you traveled from state to state and gave her the money with which to pay her own transportation, for which she paid.

Mr. LITTLETON.—We object to that question as irrelevant, incompetent and advise the witness not to answer the question. Objection overruled and appeal prayed and granted.

Mr. HIRSCH.—Does the witness refuse to answer?

WITNESS—Yes, sir. Q. 85. You refuse to answer any part of that question or do you refuse to answer just part; were you living in Chicago during March and April, 1913, were you in Chicago? [1144]

Mr. LITTLETON.—I do not advise him not to

(Deposition of J. W. Mayfield.)

answer that part of the question.

A. I reckon I was. I do not know one Jerome Gibbons. I did not go under that name. I was never referred to as the "Coca-Cola King" or words to that effect.

Q. 90. Did you live at the lodging-house of Mrs. Earl at 147 West Erie Street?

Mr. LITTLETON.—We object to that as incompetent, irrelevant and immaterial.

Objection overruled and appeal prayed and granted.

Mr. LITTLETON.—I do not object to his stating where he stayed in Chicago.

WITNESS.—I refuse to answer that question. While I stayed in Chicago I had some relatives, and stayed with them sometimes, and stayed with a friend out on the north side. West Erie Street is on the north side. I may have spent a few nights there. I was up there in Chicago in part of 1912. I think I was in Chicago in March and April, 1913. I think I was in the same line of business, selling goods. I was selling Koke. I made a few trips over in Ohio, made some Celery-Cola there, but never did I sell any Celery-Cola in Chicago. I never attempted to sell any Celery-Cola in Chicago. I think there was a party come in to Chicago from Dallas by the name of Boyd representing the Koke Company. He was up there for about a month, trying to organize a company, the Western Koke Company. I am not positive it was in those months March & April, but he was certainly up there.

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Redirect Examination.

(Defendants' Exhibit #43.) I got this bottle in Nashville the 11-30-14, November 30th, 1914. I bought it at the Crockett Cafe. I asked for either a call for a Koke or a Dope. This is a bottle of Star-Cola. I got that from that cafe in response to a request either for a Koke or Dope. (Defendants' Exhibit #44.) I bought this on the same day at Nashville, Tennessee of W. P. Watson, opposite the Terminal on a call for Dope. I identify it as the bottle I bought. I pasted the label on there and put my signature. That is also true with respect to Exhibit 43. That is a bottle of Diehl's Star-Cola, that was served to me in response to my request for Dope. After I bought them I wrapped them up in a piece of paper and sent them to A. B. Littleton in Chattanooga, Tennessee. (Defendants' Exhibit #45.) I got that bottle the same day **[1145]** from Harry Seidell down on Third Avenue, Nashville. I either asked him to give me a Dope or told him to give me a Koke, I have forgotten the expression I used. It was marked, that is a bottle of Star-Cola. I labeled that like the other. That is the label I put on. (Passing label to witness.) I identify it as the label I put on. It has my signature on it. (Defendants' Exhibit #46.) I bought this bottle from the Peels Bar, Birmingham, on a call for Dope. That was on December 16, 1914. It is a bottle of Cola-Nip. I put that label on there. I identify that as the label I put on the bottle, because I pasted it on the bottle

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and put my initials on it. I got that in response to my request for Dope. (Defendants' Exhibit #47.) I bought this in Birmingham on the 16th of December, 1914, Mecca Hotel, in response to my request for Koke. (Defendants' Exhibit #48.) I got this from, I will have to spell it—S-v-i-b-o-n-a at Bessemer, Alabama on Dec. 16th, 1914. I asked him to give me a bottle of Dope and he gave me this Cherro-Cola. (Defendants' Exhibit #49.) This is a bottle of Rye-Ola from Simp Burvin Grocery Store, Bessemer, Alabama on December 16th. I went in there and asked him for a bottle of Dope, December 16th, 1914. It is a bottle of Rye-Ola. (Defendants' Exhibit #50.) I bought this from—November 13th, 1914, at Jess McCall's, Nashville, Tennessee. I asked him for a Dope. That was served to me in response to my request for a Dope. That is Gerst's Cola. (Defendants' Exhibit #51.) That was bought from the Reliance Bar in Birmingham on December 17th, 1914, when Dope was called for. That is Kola-Rex. (Defendants' Exhibit #52.) I bought this from W. L. Delheim's Saloon on the 17th day of December, 1914, when Dope was called for, and I got Dope. That is Dope in that bottle. (Defendants' Exhibit #53.) I got this from Johnson Brothers Saloon in Birmingham the 17th day of December, 1914. I asked for Dope, and got *C-o?C-a*—I do not know whether it is Coca in it or not. C-o and a question mark C-o. (Defendants' Exhibit #54.) I got it November 30th, 1914, in Nashville from Mike St. Charles. I asked for Dope

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and this bottle contains Star-Cola. When I bought these bottles, at different times I would go in at one time I would **[1146]** say give me a bottle of Dope and again I would say give me a bottle of Koke, and they would serve these to me in response to my request. I put the labels on all those bottles and that is either my name or signature or initials. After I bought them, I labeled them and sent them to you.

Mr. LITTLETON.—That refers to all those bottles.

Recross-examination.

In Chicago, Illinois during my stay at that time, in March and April of 1913, I sold some Koke to the Wilson Drug Company, I think. I called on so many people then I cannot remember those. I think I put in a barrel to the Home Drug Company in Chicago. I am not sure now. I do not remember on April 24th, 1913, of standing on Monroe Street talking to a gentleman and saying to a gentleman, that "at the Home Drug Company the two drinks got mixed," and the Koke is in the Coca-Cola urn, or vice versa, but no harm would come from it as no one could tell the difference, what is the harm? I never made that statement, to that effect. I never made any statement like that, that would convey that meaning in any way, shape or form. Then or at any other time did I make a statement of that kind. I do not know anybody by the name of Mansfield or Warbles. I cannot recall names back that far. I meet too many people, if I saw him I would probably know him if I ever met him. I was

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up in Chicago all during that time, April 1913. I did not give those out in Chicago at all (Complainants' Exhibit No. 19.) I gave some of them out in Mississippi and some of them out in Alabama, and same in Florida, it was within the last fourteen months, I think. I do not think I gave to Mr. Warble, one of these cards, in Chicago in April 1913. I do not think that card was printed at that time. These cards were printed after that. I was out at the Haynes Brothers Bottling Company, I do not know whether it was on April 8th, 1913, or not. I do not know whether I ever told anybody in Chicago that I sold syrup to the Ashland Pharmacy, to the Annex Pharmacy and the Auditorium Drug Company there. I do not know whether I made that statement or not. I think I sold goods to that chain of drug stores. I do not **[1147]** know whether I sold Koke to the Auditorium Pharmacy, K-o-k-e, or not. I never obtained a bottle of Coca-Cola from the cigar clerk for the purpose of taking it out as a sample to sell any product. I do not see what I would have any use for a bottle of Coca-Cola. I did not tell any gentleman in Chicago on that date that I had obtained a quart of syrup from—syrup which I, Mayfield, told this gentleman was Coca-Cola, and I said I was going to a drug-store on Wilson Avenue and Sharon Avenue in Chicago. I do not remember of buying any Coca-Cola syrup. I cannot affirm or deny it. I do not remember, but to the best of my recollection, I never have had any use for Coca-Cola. I know a Mr. Carpenter. I do not remem-

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ber Mr. Hooper. I met so many of those boys up there, soda-dispensers and I do not know who all I met up there. I do not remember anything about Mr. Carpenter and Mr. Hooper coming in while I was talking to Mr. Warble and obtaining a quart of Coca-Cola syrup which I said I was going to take to a drug-store on Wilson Avenue and Sharon Road. I do not remember Mr. Hooper telling me at that time, that he would order a barrel of Coca-Cola syrup, as he is boosting it. If he is the one I think I know up there, he is one of my friends, and if he is a soda-dispenser and he was trying to push my goods, I do not recall while I was talking there that Mr. Carpenter and Mr. Stearns, soda-dispensers for the Wilson Drug Company, Wilson Avenue and Sheridan Road, entering and joining me.

Q. 125. Did not Cooper and Stearns say to you at that time, that he Stearns, could easily sell a good deal of your syrup as there was no one who could tell the difference between Coca-Cola and Koke, and did not you say in reply "that there is no difference, that he sells it and bills it Coca-Cola"—that you sell it and bill it as Coca-Cola, that the trademark is the same. I should say I did not make a statement of that kind. There is a difference in them, all the difference in the world between my trademark and the Coca-Cola trademark, they do not look alike and are not spelled anything alike. I do not remember the conversation there. I may have visited Crossups Pharmacy on Clark and Van Buren Streets on those [1148] dates, April 9th, 1913, if I was there, and when I

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was there, I was calling on all of them. I called on Rodgers and Diamond's Drug Store in the Grand Pacific Hotel. I called on him a dozen times while up there. I do not think I ever did see the manager. If I did I would probably have sold him a barrel of Koke. I never did sell him. I do not remember mentioning the difference in the price of Dope and Koke and Coca-Cola. I do not know whether I compared my price with your price, or the price of Coca-Cola or not. In a way it may have come up, after I exhibited my sample at the drug-store the proprieter, whoever did the buying may have said, "Mayfield I think you have a better piece of goods than the Coca-Cola Company have got." He may have said you want less money for this than they do for theirs. We got less money than the Coca-Cola Company. My goods have practically been a dollar a gallon, all the time. If he comes in and asks for a Koke or a Dope or asks for a shot in the arm, he could give him my goods the same as you could Coca-Cola. I may have made the statement that the way this Koke can be sold easy is that most of the people at soda-fountains ask for a drink of Koke or a shot or Dope and it is not selling or misrepresenting Coca-Cola to give Koke. I do not remember it, but if I had I would have been justified in making it. I do not remember making the statement in those words. I do not know as I made substantially a statement like that. I did not on April 12th, 1913, at Chicago, Illinois, shortly after 11:20 A. M. Meet a gentleman, Mr. Warble by name, and during the

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course of conversation say to him "I can earn $1,000 a month if I could work—if I would work every day," nor told that gentleman that I would give him 20 per cent, commission if he would sell Koke, and that no one could stop him for selling it as Coca-Cola. I did not make any statement that he could sell Koke for Coca-Cola, I may have made the statement to him that I could make that much money. I will deny making that statement. I do not know whether it was on that date or not, but I won't deny that while **[1149]** I was up there in 1913, to making the statement to him that he could sell so much Koke there a month, made the proposition offering him 20 per cent. I never did say that no one could stop him from selling it as Coca-Cola. I do not remember ever making a statement to that man, that if this man wanted the agency for the syrup, this Koke he could sell it and bill it as Coca-Cola, and nothing would happen to him, as I knew we had the Coca-Cola people there uneasy. I do not remember the occasion that I said my stuff was the same as Coca-Cola. When I go in to sell my goods, I give them a sample and they taste it and quite often, almost as a whole, he will tell me it is better. I cannot remember the different lines of talk I put up to the different soda-fountain people. I do not make the statement that we could not ship Koke as Coca-Cola, as it comes from another state, but the Koke Company intends to open an office here, in Chicago, and would make the syrup. I do not remember that the dealer tried a glass of our product and said he could not

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taste any difference between that and Coca-Cola and said he had a gallon of Koke—of Coca-Cola on hand, and that if I would come around June 1st, that is 1913, "I will give you an order for some Koke." I cannot remember what I told those dispensers and proprietors. I never sold goods with the same line of talk to any two men. I called in the Postal Telegraph Building on that party. I do not remember what date it was and I do not remember the conversation I used with him. I always had my samples, and Koke bottle. I do not remember anything of it. I do not remember making the statement that eight out of ten customers when ordering Coca-Cola ask for Koke. I do not remember what his conversation was now. I do not remember whether I gave that man a cigar at that time or not. I do not remember what I gave, whether I gave any of those circulars to anybody up there, and if I had some I certainly gave them some, anything that helped me in the way of making a sale, that was straight and legitimate. I do not think I had anything but a Pemberton certificate. [1150] I think at that time we had that printed on a bigger piece than Exhibit 19 on a bigger job, it was on cardboard. If I had one of them and had them with me at that time, and I often have had them, I gave him one. I may have told them up there at that time, when I was in Chicago, and getting ready for the organization, that if it was, and as we sold on a co-operative profit-sharing plan, that we would give them some stock in our company for the amount of goods they

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used. I do not know whether I told them how much, or what proportion of stock I would give them. I did not make any statement on June 7th, 1913, at Chicago, Illinois that I had sold seventeen barrels of Koke to the Fair Department Store, Siegel & Company, Whiteside and River Amusement Parks. I think I sold the Amusement Company some stuff. I do not think I sold them seventeen barrels. I might have made a statement that I had placed orders on that date and orders a few days prior or after that, that I had placed ten barrels approximately. (Exhibit 170) that is my certificate, we mail it and hand it out all over the country. Nobody ever took me to be working for the Coca-Cola Company. I think I was in New Orleans during the summer of 1912. I think I was in New Orleans about sixty days. I do not remember calling at the place of business of a Mr. George Jacobs, in connection with the Pittsburg Glass Company, in regard to paints, or telling that gentleman at that time that the Coca-Cola Company was suing the Koke Companies, or use the word they and that I wished him to testify that he had never sold our companies anything but common red *paid*. I may have seen a representative of the Pittsburg Plate Glass Company. I do not remember anybody by that name. I do not remember him at all. Roanoke is my first recollection of being any place in the world. I was there until I was five years old. The first place I ever attended school was at Atlanta. I went to the public schools in Atlanta, if I recollect straight, we were living on Ormond

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Street, I think. They called it the Ormond Street School, either there or when we lived out at Grants Park, I have a faint recollection of some school there. When I arrived in Birmingham, Alabama, [1151] I think we lived up over the factory, down at 2112 Morris Avenue. I lived over the factory when it was on Twentieth Street. Later on in years we had a home out on the Idlewild car line, and again on 29th and H. Street. I remember about the business on Morris Avenue. I do not remember whether we were rectifying any spirits over there on Morris Avenue. I think we rectified some on 20th Street. None of us were ever arrested for selling intoxicating liquors to my knowldege. I was never arrested for selling any booze. If we did any rectifying we had rectifier's license from the government. I think there was a sign tacked over the back door "Rectifying of Spirits." My father was not fined $100 for rectifying or selling without a state, city or county license, to my knowledge. If anything like that ever happened I was not there or knew anything about it. I have heard of Koke all my life. I heard of it over in Birmingham at the time I arrived there, fourteen years of age. The first time I have any recollection about my father's business was 1890. I have a slight recollection of father's business in Atlanta. The place of business was down below the Trinity Church. I do not remember the name of the Street, down the hill. I do not know how those streets run. I could not even say the name of my father's business at that time. I do not know

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if anybody was with him at all. I do not remember whether my father had a license to do business in Atlanta at that time. I was nothing but a kid. I have nothing but a faint recollection of my father's business until I went to Birmingham, Alabama. I can remember of that place where he manufactured syrup and I can remember his office up in a big building, I think it was up on Marietta Street. I think it was in the Norcross Building. He manufactured Cola syrup, practically the same thing he is manufacturing now. I do not remember what he called it but I can remember a lot of Koke. I think I do in some manner remember Wine of Coca. I do not remember Celery-Cola. I do not remember anything about Indian Queen Hair Dye, nor Globe Flower Cough Syrup, I was too young. I can remember, a faint recollection of how the interior [1152] of the place looked, I mean what was in there, the reason I remember it was because he always had big boxes of brown—and barrels too, barrels of sugar. At that time they had tickets and I used to steal those tickets and go out and trade them for ice-creams, and these other iced drinks. I would not get Koke with them, the druggist would let me have anything. I think those tickets had on them, Koke. My father got out tickets for Koke which I exchanged for ice-cream. I do not remember where I made that exchange, one place was on the other side of the railroad where this Brown & Willis is now. I think it was a drug-store, I do not remember who it was. I do not know what was on the tickets

(Deposition of J. W. Mayfield.)

besides Koke, it was good for a nickel's worth of trade. That is what it was good for, complimentary ticket, good for a glass of Koke. My father used to have those tickets and I would go and take them and exchange them for ice-cream. I drank Koke when down at the office. I may have drank Koke in exchange for these tickets. I was not in Atlanta all that time, 1890-99. It is a faint recollection about anything over there at all, that and where the office was in the Norcross Building, and getting this brown sugar they had down there and getting these tickets, is about all I do know. I think at that time there was a Wine of Coca, there too, I do not know whether he was interested in it or not. I do not know whether I would recognize one of those cards or not. Those cards were about an inch and a half wide. It is all very faint, I do not remember very much about them. It had Koke on it. I think it was printed. I do not remember whether the Pemberton Medicine Company's name was on it or not. I have just an idea about getting ice-cream for them. I do not remember the manner of the printing of Koke on it. I remember about going to Birmingham in 1898 or along there. The business had been opened when I went over there, father had just gotten started. I do not know what was the name of his business, how he styled himself. I was about fourteen. It was not a vinegar business, it come in later. I remember the Schuyler and Gregory Vinegar Company, too, it seems. That company [1153] was not connected with my father. My father was

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up-stairs. He had a big kettle upstairs and a big tank downstairs and he made the stuff out of the tank, and let it run in a tank downstairs. He was shipping syrups and extracts. He was shipping containers, jugs and kegs. It was Koke and Celery-Cola. That was the first I ever heard of Celery-Cola, that was about 1899, also Pepsi-Nola. I do not remember anything else, I do not recollect of anything else. I think that was all. About that time though he installed a bottling plant. We installed it ourselves. We bottled Celery-Cola, Koke and Pepsi-Nola. That was the old Hutcheson bottle. They had a Koke label on the bottle. A star-shaped label, similar to the one they use now, I mean about the same size. Q. 291. You mean diamond-shaped? A. Yes, sir. I think they have on it "Delicious, Refreshing Koke" "Good for Fatigue, or Relieves Fatigue." It was not the type as shown on this #19, just printed in regular printers' type. We used all kinds of barrels, all they bought, they would *paid* them red or I would paint them red. I painted them red myself, all we used. I was actively in the business then. Outside of myself and my father I do not remember anyone else down there except Britton. I do not remember his initials. I think Mr. Britton was the bookkeeper. I think a stenographer was around there. I do not know her name. The only person I remember was Britton, my father and myself. I have not the least idea where Britton is. I have not seen him recently, nor the stenographer. At that time, I think it was Mayfield

(Deposition of J. W. Mayfield.)

Manufacturing Company, J. C. Mayfield Manufacturing Company. It stayed in business up until 1903, or '04. My father continued the same business. Part of the time he ran under the name of Schuyler Vinegar Company. I do not know whether the J. C. Mayfield Manufacturing Company ceased to do business or not. Up in 1904, I think it was known as the J. C. Mayfield Manufacturing Company in Nashville, and in Birmingham I think Schuyler Vinegar Company. I think it was known as J. C. Mayfield Manufacturing Company in Birmingham about 1900, I do not know how long. After the J. C. Mayfield Manufacturing Company had ceased to do business we used the name Celery-Cola Company, I think. During [1154] the time the J. C. Mayfield Manufacturing Company was doing business there, they were making Koke and Celery-Cola and Pepsi-Nola and a general line of extracts, that is soda-water extracts. I do not think they were handling any spirits there at that time under the name of J. C. Mayfield Manufacturing Company. That business was located at the time it was known under the name of J. C. Mayfield Manufacturing Company down on Morris Avenue. The name of the business when located on 20th Street was the Celery-Cola Company, the Celery-Cola Company engaged in the manufacture of Celery-Cola, Koke, and sold extracts and ran a bottling works. The Koke was one of their products. I do not think anybody was interested in them. It was Celery-Cola Company, nobody but my father was connected with that

(Deposition of J. W. Mayfield.)

When we moved to 20th Street the name was changed from J. C. Mayfield Manufacturing Company, the Celery-Cola Company. There was a Celery-Cola Bottling Company. I do not know whether there was two or not, I was not an inside man. I was painted barrels and doing the mixing. At different intervals, when I come in off the road for awhile, I would go up and do that. The Celery-Cola Company continued to manufacture this product Koke on 20th Street. The Celery-Cola Company had stationery and things of that kind. I do not think they had on their stationery the drinks they were making. They did not have Koke to my recollection. Celery-Cola was put on there, they were trading under that name. Beside the name Celery-Cola Company, I do not remember there being anything else on them. They had shipping tags with Koke on them, and labels and advertising matter. The Celery-Cola Company stayed in business in Birmingham, up to about 1910. I was not with them up to about 1910. I have been running all over the country. I went to Atlanta along in 1900 or 1901. I stayed there about five or six months. I sold Koke and Celery-Cola there. I distinctly remember selling old man Harris down on Marietta Street. The name of that plant was Standard Bottling Plant. That is W. R. Harris. I think he is over there now. I remember selling a fellow down in the Norcross Building. I sold him Koke. I sold Harris Celery-Cola. I do [1155] not know the name of the man I sold the Koke to. He was one of the biggest

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druggists over there. He was running a big soda-fountain. I was in the Norcross Building, I mean out there at the end of the viaduct where the big bank building stands. The viaduct was not there then, you had to go down and over the railroad, that was in 1901 or '2, that I sold this drug-store in the Norcross Building. I remember selling him because I went down and took my extract down there in his basement and showed him how to make it. I remember selling him Koke. It was not Mr. Venable or Jacobs. I do not know whether it was Mr. Norcross. I think it began with a C. I am not positive but I think I put some stuff in with Wylie. His place of business was over on I think Whitehall. I sold him the same product, Koke extract. He made up the product himself. I delivered it to him in jugs. It did not have any label on it, for the simple reason it was shipped down in kegs, and a man would not buy over a gallon because a man could make 11 gallons of syrup and I would buy a jug for a nickle, wash it out and carry it around to him. The kegs had Koke on them. I made my headquarters at the Standard Bottling Company, I had a place where I mixed it there. It came from Nashville. Sometimes they would come by express. It would have to come by the Southern Express Company. I have not any receipts or anything showing it came by express during those times. I have not any labels, letterheads, or anything with the name Koke on it, during those times. I did not keep my correspondence, that long, if I did I would have a carload. I did not

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keep receipts, what did I want to keep it for. That is about all I can remember, I sold in Atlanta. I think I sold others but I am not positive that I did. I think I sold a man that ran a drug-store right up above where I sold this other party on Marietta Street over about the other viaduct. It is between Forsyth Street and the viaduct, Broad Street viaduct, right over on one of those corners. It is mighty near, it is not hardly directly across from the old Columbia Theater there. It is on Marietta [1156] and Broad, on the opposite corner. I do not remember the name. I sold him Koke. He had a drug-store and a soda-fountain. I cannot remember any other name. I cannot say positively that I sold to anyone else. This was the only business I was in. From Atlanta I went back to Nashville, Tennessee. My father had located at Nashville, Tennessee when I went back there. They had so many places of business in Nashville, back there I cannot remember. One was Diehl & Lord's one was on McLemore Street, right down at the Court House; one was in the back end of the Vanderbilt Building and another was on Front Street. He was selling Celery-Cola, Koke extracts, and syrups. I have no label, or anything that has Koke on. During that time all the labels we had, we had no use for them to keep them, we sent out to the trade. That stationery was either used up or, I have not got any. I do not know that anybody has got any. I guess a lot of the old trade has some if they keep their correspondence. No one connected with the

(Deposition of J. W. Mayfield.)

Southern Koke Company has, to my knowledge, I do not know whether my father has or not. We were not connected with any bottling business there at all in Nashville. I do not know whether my father had been connected with any bottling business or not. I do not know as he was president of any bottling Company. I remember a concern known as Tennessee Carbonating and Supply Company. My father was not connected with that, to my knowledge. I do not know if he was vice-president of it. We sold them extract, Celery-Cola extract. We did not sell them Koke. They bottled Celery-Cola extract and Pepsi-Nola too, two pieces of goods we sold. We were shipping Koke all over the country at that time. They were bottling it throughout the Carolinas, down in Georgia, and down in Florida. I cannot remember the customers. I did not get out in all that big territory, my brother did that. He was older than I was and he made most of these trips. [1157]

Q. 458. Will you name one person you called on, one bottler who bottled Koke during the time you were at Birmingham or Nashville with these different concerns?

A. That is too long ago, I cannot remember.

Q. 459. You cannot remember a single one?

A. No, I cannot. When I was at Nashville, Tennessee, I remember going down to a bottler [1158] down at Lebanon, Tennessee, I do not remember his name. I sold him Koke and he bottled Koke. That was in 1902 or '3. We had very few bottlers bot-

(Deposition of J. W. Mayfield.)

tling Koke, we were specializing to the bottler Celery-Cola, Koke was almost exclusively used at the soda-fountains. I sold a couple soda-fountain people at Lebanon. I do not remember any man's name, that far back. I do not remember the name of any one I sold to in Nashville. There was one place I sold up at Murfreesboro, North Carolina, he was a bottler, I think. I do not remember whether at the time he had a bottling works and business located in Murfreesboro. That was along in 1902, I think. It was Murfreesboro, North Carolina, it was either Murfreesboro, that was the man's name or something like that, and if it was not there it was right above there at Goldsboro or Salisbury, I think we had a bottler at almost every one of those places. I am almost positive it was Koke they bought. I would not swear it was Koke, and not Celery-Cola, I do not think it was Celery-Cola, but think it was Koke. I do not know who they were, these bottlers. I know that I went up there. I remember all kinds of mail orders coming in for it. I do not remember the names. I remember in Nashville there was Freed & Haas and Diehl & Lord and Dorider & Side-bottom and I think Sann or Samm. I do not know his initials. I think he is still in business. I think Demoble handled some in Nashville. A party out at the park used to handle it. I do not remember who he was. There was a bunch of them down at Birmingham using the bottled goods. I cannot recall their names. I cannot remember the names of any other than those named, but if I should go to

(Deposition of J. W. Mayfield.)

that town I could go right to their place of business if it is in the same place as when I went there, and if I sold the man I could come near calling his name, if I did not I could know him when I saw him. I could do that in Cincinnati, in fact I could do that in practically any town of any size east of the Mississippi River. I have been in all the towns of any size east of the Mississippi River, as far up as New York, and as far south as Miami. I have been talking about [1159] the product Koke, except where I have specified Celery-Cola or where you have specified Celery-Cola. There was some people down in Florida Groves handled it. McGraw at Cadsden. I do not remember Baker at Newman, Georgia. Since the institution of these suits, if we could find the names and parties we did business with back there, we searched for them so we could use them. I have not found out any names. Those names are some I happened to remember. I have very little to do with the inside work. I looked for them down in Florida and the territory I have been working. There is one man at Daytona. His name is Hankle, I think, at Daytona, Florida, I think it was. He was a druggist down there, he is still a druggist. I never did sell him personally myself, but he handled my goods back twelve or fourteen years ago. I think he is now at Daytona, Florida. I was told by one of the soda-men who was with him that he handled Koke back that far, by a fellow named Sam Dunlap. He is at Jacksonville. He is in business for himself. He remembers that Hankle handled

(Deposition of J. W. Mayfield.)

Koke. He handles it now. I stayed in Nashville, up until about the latter part of 1902 or first of 1903. I went to Saint Louis. I opened up a laboratory there. Brittian was in charge of that laboratory. I think Mr. Brittain is dead. That laboratory located in Saint Louis was at 18 Olive. We were making Koke there. The name of the concern up there was Mayfield Manufacturing Company. I was not connected with the Celery-Cola Bottling Company up there at that time, the J. C. Mayfield Manufacturing Company owned the bottling plant. I do not think Celery-Cola was bottled there. I do not think there was two companies. There was not a Celery-Cola Bottling Company there at that time. It started after the fair, I think. Up to that time my father practically owned it and then sold out. I do not remember who he sold to. The Celery-Cola Company bottled Celery-Cola and a general line of flavors. Whether they bottled Koke, I do not know. I left about that time. There was a bottling plant owned by the J. C. Mayfield Manufacturing Company. They bottled Celery-Cola. They did not bottle Koke, that was in Saint [1160] Louis. I sold goods there. I had charge of the Suburban Park Stand. I was in charge out there almost exclusively. I don't know whether it was owned by them or leased by them. I was manufacturing Celery-Cola there. It was a soda-fountain operated by the J. C. Mayfield Manufacturing Company. I had charge of it. We manufactured Celery-Cola, Koke and several others. There was a little difference be-

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tween Celery-Cola and Koke. Celery-Cola had a little bit of Celery in it. We made up some of the syrups at Saint Louis. I was in charge of the laboratory. We made up Koke and Celery-Cola. We would usually take the ratio of 12 pounds of sugar to a gallon of water and dissolve it. My father did the manufacturing of the extract. I manufactured the syrup from the extract. I made both syrups. I made them at different times. The only difference was Celery-Cola had a little celery in it. I had nothing to do with the sales at St. Louis. I was operating the soda-fountain at Suburban Park and later the soda-fountain at the office. They had an office at Birmingham and in Nashville. My father was in Nashville with me very seldom. He was in Nashville most of the time. A fellow by the name of Fox was in charge of the Birmingham office. I do not know his initials. Rice, the name is familiar but I do not recall that he was employed at the Birmingham place. I was up in Saint Louis. While I was in Birmingham, we had three or four young chaps there about the plant. I do not remember their names, and old man Garret was there, a bookkeeper. I do not remember his initials. That is about all I can recall; of course, they were coming and going all the time. You cannot keep the same employees all the time. This man Brittain was the same man that was at Saint Louis. I have not the least idea where Garret is now. After I left Saint Louis, I went back to Birmingham and stayed a year or so. The Celery-Cola Company was operating

down there, manufacturing Koke. The employees of the Celery-Cola Company were the same crowd. We had a salesman there by the name of Benjamin. I do not know his initials; **[1161]** I guess he still lives up there in Birmingham. I have not seen old man Benjamin in fifteen years. Celery-Cola Company, J. C. Mayfield Manufacturing Company and Schuyler Vinegar Company, that is all the companies. When I went back to Birmingham I made a business trip to Georgia, Alabama and Florida. Old man Groves had been *handling a* long time before then. I do not remember who else I did sell on that trip. I cannot remember, working all over the country, and meeting fifteen or twenty different merchants a day, I cannot recall the names. I sold a bottler over there at Savannah. I sold him Koke. His place was located, if I was over there I would walk right up to the place. I do not know how the town lays. I do not remember his name, nor the street he was on. I have been inside the plant. I do not remember what kind of machinery he had. That was in 1905 or '6. The boat I went up on was City of Savannah—City of something, they have City of Savannah and City of Macon and City of Memphis. I went to Atlantic City. I sold it at Atlantic City. I sold to the biggest soda-fountain in the world, at that time, the White Rock Company. They are still in business up there. I sold the White Rock Company Koke. They have their water on the market still. They were advertising White Rock and I went down there and took a position just to

(Deposition of J. W. Mayfield.)

get my stuff on the fountain, took charge of the fountain. After I left Atlantic City I was in New York and worked in lots of different places. I sold Koke up there. I worked in soda-fountains from 132d Street to the Battery. I do not remember the names of the places. After I left New York I stayed in Birmingham, and then went to Dallas, Texas, and stayed six or seven months, and had an office and laboratory at Dallas. That office and laboratory was located up on Main or Elm, on one of those streets. I was doing business with the Celery-Cola Company, we were selling Koke and Celery-Cola, that was all. Most of the stuff came from Birmingham, I had some out there. I filled orders at that office, mail orders mostly. We were shipping goods all over Oklahoma and all over Texas; I cannot remember the names. I made a trip up through Oklahoma, just a selling trip, and then my [1162] health got bad and I came back to Birmingham. I did not stay in Birmingham any length of time, then. The Celery-Cola Company was doing business there at that time. From there I went to Richmond and stayed six or seven months, and opened an office at that place, down on Broad and 12th Streets. The name of the Company was Celery-Cola Company. I did not take out license, that I know of, at those places. I do not think they required a city license. I did not take them out to my knowledge. We did business with a number of people there. I cannot remember the names. We done business all over the two Virginias, Carolinas

(Deposition of J. W. Mayfield.)

and up in Maryland. We were selling more Celery-Cola in our business with the bottlers. Koke went best with the soda-fountains. We did not have very much money for advertising so we could not push both, and Celery-Cola being a bottling syrup, being bottled all over the country, they would have all the advertising. Advertising of the Koke syrup *out*, that was known the best. I do not know where I got the advertisement. I have no correspondence from Richmond. I do not know whether I can get any correspondence over five or six months old, if I could get it from my customers. Then I went to Indianapolis from Richmond. I placed it through a jobber. I do not remember who he was. I sold hundreds throughout Indiana, Ohio and Michigan but I do not remember them. I remember selling Celery-Cola to Moore Brothers at Toledo, O. P. Clee at Milltown, Dayton, and I sold Koke syrup to quite a few people at Cincinnati. I cannot recall where they are. One is in the Arcade; a Greek also has a place over on the square. That was when I had my office at Indianapolis, about '8 or '9. Up there all I was doing was taking the orders. If I had some of the old order books I could reel them off. I have not any of my old order books. They are gone. What do you want to take a dead issue around with you for? I was in Dallas. I was at Houston, opened an office in Houston. I mean, not an office but a laboratory, in an old bottler's there. I do not remember the Jew's name, a great big bottler up there near the railroad track in the city. When I [1163]

(Deposition of J. W. Mayfield.)
went out there he was bottling Coca and Cola and then I got him to put in Koke. I cannot give his address. Out of Houston and Dallas, I did business all over the state. I cannot remember the names, I called on so many people in the territory, meeting people there, I cannot remember the names. I can recall the places but I cannot recall the names, and then I went to the east coast, Carolinas and Virginias, traveling selling Koke. This was along in 1910 when I was in Dallas, 1911, when I was there. 1910 I was with that Jew bottler in Houston. I was there about a year. I do not even know the railroad this bottling works was situated on. I remember another bottler handling my stuff, Koke; I do not remember his name. Both of these bottlers handled Koke, about four years ago. Within the last year or two years I sold to Albright & Wood, of Mobile, Sutton Brothers, Central Pharmacy in Mobile. A fellow named Davis over there, that is all I can remember there. I sold some down in Pensacola; I sold the Busy Bee, the Bloodwine Bottling Works—not Bloodwine, the Brainol Bottling Company, the De Funiak Springs Bottler, B. Merk. I made every town in Florida. I do not like to mention all my customers. I do not want to mention my customers, I can reel them off. You have got them all down there scared to death on this litigation as it is. I bought these bottles I produced and testified to here. I do not know whether they are all I got or not. I think I got some more. I got Mi-Coca, Rye-Ola, Wise-Ola, Pepsi-Cola, Brainol and Gay-Ola. I do

(Deposition of J. W. Mayfield.)

not remember of any more. I got Coca-Cola. I did not present them, that was not the kind of evidence I wanted. I knew that Coca-Cola, and everyone else knows that some Coca-Cola is sold on calls for Koke and Dope. [1164]

Deposition of John F. Williams, for Defendants.

JOHN F. WILLIAMS, a witness produced on behalf of the defendants.

Direct Examination.

I am forty-five years of age, I live in New Orleans. I am engaged in the business of printing. I printed the label on the bottle filed in this cause as Defendants' Exhibit #38. I printed two hundred thousand of them. In October, 1913, was the first labels I had printed for him. It cost $36.00 to have those printed. Mr. J. C. Mayfield Sr., furnished the cut, and I sent the labels to him after I made them. About his place of business on Howard Ave.,—608, I think. Mr. Mayfield furnished the cuts. The cuts came from the New Orleans Engraving Co., he gave us the order for the labels and he may possibly have asked my advice about the colors. That has been a year and a half ago. This was a new label never used before.

Cross-examination.

Those labels were made by me in October, 1913. I do not remember whether or not Mr. Mayfield brought me a sample of an old label that had been used before that. He made a contract for the work and the labels were brought to me by the engraving

(Deposition of John F. Williams.)

company, by the New Orleans engraving company. They were new cuts. I had not known Mr. Mayfield very long before this October, 1913. I had known of the company probably a year, here in New Orleans. I did not have any business dealings with them, I tried to. The people that had charge of it previous to that time were friends of mine and I tried to get the work, tried very hard but I did not get it. They have a good deal of work. I have done other work for them, stationery, order blanks, price lists, circulars. This order of October, 1913, was about the first, since then I have been printing order blanks and stationery.

Deposition of William Dalton, for Defendants.

WILLIAM DALTON, a witness on behalf of the defendants.

Direct Examination.

I have lived in New Orleans a little over four years, in the insurance business. Before that I lived in Texas, Sanford, Jones County, principally. I am now manager of the Accident and Health Insurance Company. I am fifty-two years of age. I was connected with the Southern Koke Company, Limited of New Orleans. I would not be in a position to tell you about **[1165]** the date, but I was connected with them for three months, about three months and I think along about May, June, July. I left the Koke Co., and was gone about two weeks on a trip, to Denver. I do not remember just what date it was but it was somewhere about the

(Deposition of William Dalton.)

11th or 12th of July I imagine, when I went to Denver, Colo. I was Manager of the Southern Koke Co., Limited. I knew Mr. Scott, he was still connected with the Company when I was there the first time. Mr. Scott is now dead, he was killed very suddenly and I returned to New Orleans just about the time or just subsequent to his death, I cannot recall the date of his death and I cannot recall the time that I came back from a trip to McKinney, but Mr. Scott was dead when I took hold as manager there. I met Mr. Scott some two or three months before I took hold of it and that was one of my conversations with him in a general way. I knew C. W. Whittle, he was an ex-saloon-keeper or bar-tender. He never sold Koke for the Southern Koke Co., under my administration. He was never employed by the Southern Koke Company to my knowledge. Somebody was foolish enough to sell him one or two shares, I have forgotten how much, of stock in the company, I bought them back from him. I paid him back for the stock, what he paid for it. I do not remember how much it was but I gave him what the stock was worth, I am not sure—I do not remember what he had one share or five shares. He came to me and wanted to sell it and I took it out of his hands for the reason that I did not think he was a man that ought to have it anyway, on general principles. I know very little about him. He was a bartender and lost his job and I would not consider him a fit subject to represent the Koke Company either. I used to know a man

(Deposition of William Dalton.)

by the name of Cheever who was with the Koke Company in some capacity, I think he was when I went there. I think he was fired about the time or shortly after I went there. Neither the Koke Company nor myself nor anyone connected with the Koke Company, so far as I know got Cheevers nor employed Cheevers to sell stock in the Southern Koke Company. Cheevers was in some manner connected with Mr. Scott. They used to go around together. Scott did not live with his wife but was at Mr. Cheevers home in some inside semi-social arrangement **[1166]** between them that I do not know much about. During the time I was connected with the Koke Company as manager, I never instructed any of our salesmen, or hear any of them instructed by anybody to attempt to sell Koke as and for Coca-Cola, or advise their customers they could do so. None of our salesmen, Cheevers nor Whittle nor anybody else told me that they had been telling the dealers and the customers that they could easily palm off Koke for Coca-Cola. The matter was never under discussion to my knowledge, and no instructions were given during the time I was associated with the company in any manner, toward using Koke as a substitute for any other drink. The Southern Koke Company, Limited during my connection with it, neither through me as manager nor thru any of its agents so far as I know, never in any manner attempted to palm off Koke for Coca-Cola. I heard Mr. Mayfield distinctly tell them not to do anything of that kind. There were some

(Deposition of William Dalton.)

gentlemen called on me, that gentleman is the one (indicating Mr. H. B. Pierce). Mr. Pierce over there, the detective for the Coca-Cola Company.

Mr. HIRSCH.—I object to that, there is no evidence in here that Mr. Pierce is a detective for the Coca-Cola Company at all.

He did not tell me he was a detective for the Coca-Cola Co., but Mr. Freeman and Mr. Pierce called on me at one occasion in my office, I do not know that they said it was anything about two detectives. He told me that he was a representative of the Coca-Cola Co.

Cross-examination.

I do not remember when Mr. Freeman and Mr. Pierce called on me. I had no reason to make a note of the date. I would not dispute the date for I do not know. It was during the time I occupied the office in the Hennan Building. I know Mr. Wright. At the time Mr. Freeman and Mr. Pierce called on me they wanted me to go to the stand and make affidavit to the effect that the Southern Koke Co., Limited was substituting a drink, which by virtue of its similarity to Coca-Cola—they were having me give a deposition if I was able, to the effect that it was virtually the same. I told the gentlemen I could not do anything for them. I did not pledge these gentlemen to secrecy about what I did tell them. I told **[1167]** them this, we had a conversation of an hour or so, pardon me if I am a little bothered. I say an hour, two hours, do you want the whole detail. In the first place I am here

(Deposition of William Dalton.)

against my will, in the second place I am engaged in a business that I did not want to become identified with any lawsuits for the reason I was before the public in another proposition of my own, that I did not want the slightest reflection cast upon, which in other words I was fitting myself for the position of manager and assistant secretary of the company. I now hold that position. The reason of my secrecy was to keep me out of the public limelight. I did not want to get in touch with a public lawsuit. I am here against my will because I am engaged to be somewhere else. If you want to keep me behind time, I am engaged at 7 o'clock to be down town. I live at 74 Peters Ave. I did not want to come.

Mr. LITTLETON.—There is a subpoena out for him but I got him over the 'phone. Mr. Pierce and Mr. Freeman called upon me and tried to get me to advise with them so as to enable the Coca-Cola Company to successfully win a suit against Mr. Mayfield's company. I told them I did not want to be connected with or associated with it. I wanted to keep away from any connection whereby I might be brought into the public limelight; they also wanted to know whether I would say things that I could not say. I was associated with the Southern Koke Company, Limited, as sales-manager. I sold some stock for them. I was manager for the company. My position as general manager for the Koke Co., was donated to me by the President of the company, Mr. Wright. I held it for a short

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time, two months or more, maybe three months I do not remember exactly. In August, 1913, I severed my entire connection with the Southern Koke Co. When I severed my connection with the Southern Koke Co., Limited, Mr. Mayfield on my severance agreed to pay me in cash for all the stock I had sold for myself and friends, I did not say at that time that J. C. Mayfield claimed to own one-fourth interest in the formula of Coca-Cola, for I did not know. Nor did I say that the extract being made by Van Dusen of St. Louis, Mo., is from the formula of Coca-Cola. Those were questions practically propounded to me, I did not say any part. In other words I am trying to find out what you said. I understand you, the point that you are passing that thing as being in my **[1168]** statement is not so. The Southern Koke Company, Limited, of New Orleans purchased this extract from the Koke Company of America, under a contract. That is my understanding of the contract, I had and it was also told me as near as I can remember, or words to that effect by Mr. Pierce if I got the name right, Mr. Pierce, that the Southern Koke Co., Limited, did not manufacture the syrup they used, but were compelled to use the extract manufactured by Van Dusen of St. Louis, Mo., to make this syrup by addition of simple syrup and water. No, that is a question that was asked I do not know one part of that secret formula. I presume you or I do not know anything about it, but I did not make that statement, those are rather lead-

(Deposition of William Dalton.)

ing questions. I do not know whether—if I had brought the copy of the questions propounded to me and sent to me thru Mr. Freeman, I would have been able to verify them, but those were the questions put to me whether I could substantiate them. These quotations came from this gentleman, or some lawyer, or gentleman thru Mr. Freeman, I presume they were left in my office when I was out, I did not say that the Koke Co., of America does not manufacture the syrup to sell to the subsidiary co., never had been selling those companies syrup but manufactured an extract made by Van Dusen of St. Louis, Mo. I did not say that the method used to market the Koke to the retail trade by the Southern Koke Co., as per instructions of the Koke Co., management, and as instructed by yourself during the time of your management was as follows: That the salesman was to approach the retail dealer and inquire of him how much Coca-Cola he sold a year. I told Mr. Pierce in the conversation that I personally had gone into a drug-store in the city of New Orleans and made that inquiry on my own account. The agents were not given any instructions to that effect. I told Mr. Pierce I personally went into a drug-store in the City of New Orleans and asked how much Coca-Cola had been used by that institution, and he told me. I told Mr. Pierce that that was my statement, and not what I told my company's men, employed by us while I was connected with that company. The instructions to the men were to go out and sell the Southern Koke Co.,

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Ltd., product wherever and whenever they could to customers that would be absolutely able to pay their bills. That is his **[1169]** instructions, the salesman would sell the goods. I did not tell the salesmen to say we have a product that is the same as Coca-Cola, neither were the salesmen allowed to make the statements. They were told positively to keep out of the way of Coca-Cola, to boost us and sell the stuff, that the best way to sell the stuff was to sell it on its own merits, not on someone else's, and that applies to the time before I went there. To the best of my knowledge the only difference is the name and we sell this product Koke at a much cheaper price than Coca-Cola. No instructions of that kind were given to me or by me or thru me to any one of the salesmen, to defy the public to tell the difference between Coca-Cola and Koke when carbonated water has been added. (Reading from Statement:) "Now, if you will give me an order for half of your Coca-Cola business for the year you can save a lot of money," not one of my agents had any instructions at the time I was with them. (Continuing reading statement.) "That you have a large number of customers who ask for Koke." To Mr. Pierce or Mr. Freeman I am not clear as to whether I did or did not say that, I think I figured with Mr. Pierce that if I had been connected with them I could have used it to good advantage, is that not so Mr. Pierce?

Mr. PIERCE.—I am not on the witness-stand. That is right I had forgotten, I am on the stand, you

(Deposition of William Dalton.)

know I want to get to the bottom of this. Now, Mr. Dalton, instead of my reading this to you I hand it to you, a sheet—two sheets of paper which we call exhibit #20 and ask you to just read over, that purports to be a conversation between yourself and Mr. Pierce and Mr. Freeman; you take that and read it over and take a pencil and strike out everything there that you did not say to this gentleman.

Mr. LITTLETON.—We object to that form of examination and advise the witness not to do any such a foolish thing as that. I cannot do that, I am prepared to go over and verify word for word what I may have said to Mr. Pierce informally. He represented to me that he was the Coca-Cola's agent and wanted information. All I can tell you is that I had not anything that I could give him that would benefit him. (Reading from statement:) "That you had a large number of customers who want Coca-Cola when **[1170]** they ask for Koke, and that you can serve this product." No, sir. "That the salesman then went on to inform the dealer of the stock proposition, offered by the Southern Koke Co., to retail dealers." I said that the salesman had some right to tender a certain amount of—I have forgotten whether it is common stock, based upon a certain production or certain sales of Koke of Southern Koke Co., drinks, but that matter was not discussed between the salesman and myself, it was an arrangement previously entered into which I did not change. "That, if the dealer stated that when the term Koke was used by the customer,

(Deposition of William Dalton.)

when the customer wanted Coca-Cola, that the salesman should reply well, it is not your business to know what a customer wanted, if customer wanted Coca-Cola and called for Koke the dealer had every right to give such customer the product of the Southern Koke Co., as the customer asked for Koke. That was propounded to me by Mr. Pierce and Mr. Freeman. That is not part of what I said to them. They wanted me to acquiesce to it but it was not so and I did not. Coca-Cola is not the same drink in every respect. I was asked to affirm if that was so but I could not. I did not say that Koke was a long established and universally used nickname for Coca-Cola. I said it was back of me. I said probably it was and probably it was not. I did not say "It was universally understood by retail dealers and consumers, but outside of New Orleans, Louisiana you did not know where the product as advertised, but that every shipment of Koke syrup, had advertising matter sent with it and furnished several places in New Orleans, you did not know where this advertising was used or displayed." How could I know it was a nickname. Koke was a drink and was sold. I have heard Dope. I did not have any impression of Koke or Dope we simply sold ours as Koke. I was an insurance man before July, 1913. We used Dope in our business right along and all this stuff will be Dope when you get through with it. I believe my personal information is that all that stuff goes under a common name of Dope or Koke, all those drinks, under different

(Deposition of William Dalton.)

names, I do not think Coca-Cola is anything else but Coca-Cola, Koke is Koke, Gay-Ola is Gay-Ola. I severed my connection with the Southern Koke Co., because it was not a congenial business for me, it was outside **[1171]** of my line, I was not used to that class of business, that was the only reason I severed my connection. I think Mr. Freeman wanted me to make some statement relative to the deal in which I was induced to make the contract I had before I went there, they implied to me that the word was practically a copyright of the Coca-Cola people. I said I did not know whether it was or not, I do not know now. I think Mr. Pierce asked me if Mr. Mayfield took advantage of the fact that the term Koke was universally used for Coca-Cola. I could not tell you just what I answered, I did not answer but very little to Mr. Pierce. I did not state that the Coca-Cola company made a serious mistake when they permitted Mr. Mayfield to acquire the trademark Koke over their heads. I spent about two hours with Mr. Freeman and Mr. Pierce.

The WITNESS.—Now, there is one thing I want you to straighten out in that record, that I positively told Mr. Freeman and Mr. Pierce that I wanted to have no publicity. Mr. Pierce came to me and tried to have me—he said it had been stated to him that I was not very well satisfied with my connection with the Southern Koke Co., Ltd., I do not know where Mr. Pierce got the information, or ascertained the fact. I said well, probably so, but

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there was nothing only the fact that I resigned for the reason that I was not congenial to that class of business. I am an insurance man and have been for years and I cannot go out and sell Koke, Dope, Coca-Cola, or Rye-Ola.

Deposition of W. J. Finnin, for Defendants.

W. J. FINNIN, a witness produced on behalf of the defendants.

Direct Examination.

I am thirty-three years of age; reside in New Orleans, and am engaged in the retail liquor business. I have got the sign out there, cafe, and from ten to twelve or twelve-thirty, it depends on how long the soup will last, some days it will last until one o'clock, some days it don't go until twelve, but I put up cold sandwiches, such as you order, such as sardines, ham, and I have got an Irish—another little herring, you put in between the bread and make sandwiches, the only hot lunch I have is soup, I have that to serve when you want something to drink. I dispense soft drinks at my place. I have white pop, at least not white **[1172]** it is creme soda, they call it, and sarsaparilla and celery tonic, put up by the World Bottling Co., ginger-ale put up by the World Bottling Co., and I made lemonade and seltzer water and I make up a drink they call Naco with just seltzer and ice. Naco is a syrup, you put a little in it, just like someone comes in and says a little raspberry syrup and seltzer and I think I have some of that Koke syrup made up the same way with seltzer and ice, just the syrup not in bot-

(Deposition of W. J. Finnin.)

tles. I get the Koke from the Southern Koke Co., I believe they call it to the best of by knowledge. Sometime back there was a young man asked me a few questions about the Coca-Cola Co., and the Koke people, he said do you handle Coca-Cola, I said I did not, I handle Koke syrup and Naco; he said if a man came in and asked for Coca-Cola would you pour out that and give it to him for Coca-Cola, I said no, I never misrepresent anything. I would tell him I have got the Koke syrup but I have not got Coca-Cola, and some of them will say I want a bottle of Coca-Cola and I have not got it. To the best of my knowledge, I think it was a Coca-Cola man. Cheevers has not sold me something in a long time. Mr. Scott died in May, 1913. After the old man Scott died Cheevers was not selling it any more and I never had anybody call on me but another man. Cheevers sold me this Koke. He said, I want to tell you something Bill, this is Koke. Just a Koke syrup and mix it up with ice water and seltzer. I knew Mr. Scott before Cheevers called on me. Mr. Scott called on me for months I guess, before I knew Scott was representing, or what his mission was or anything else, in fact he never did mention anything to me. I think this was Billy Cheevers, I do not know if he had a middle name or not. He never told me once that this syrup he was selling could be passed off as Coca-Cola, or tell me to pass it off as Coca-Cola. He just said this is Koke syrup, told me how to use it and demonstrated to me, said you put this much syrup in the

(Deposition of W. J. Finnin.)

glass and fill it up with ice and the more ice you use the less seltzer you have to use. Looked mighty good to me. My place of business is located at 625 Commercial place between Camp and San Carlos, right in the back of the Bakeman Bldg., in fact is in the rear end. Commercial Place is the proper name some **[1173]** people call it the Alley, I do not want to live in an alley or do business in an alley. I do not know a man by the name of C. H. Whittle, I might know him by sight but not by name, I do not think he sold Koke to me.

Cross-examination.

I have never heard of this Koke syrup until Mr. Cheevers sold it to me. That is the first time I ever heard of it, would not have handled it had it not been for Billy Cheevers, because I always handle creme soda, and black pop, and this Hemorasic syrup, and when a fellow comes in and asks for a soft drink I will usually take one or sell him a drink of ginger-ale and when he wants a mixture, and says I don't like ginger-ale why it is ready. Some people call it raspberry, and raspberry is a darker color than Hemorasic, that is all the difference in them. Hemorasic is a fruit syrup lighter than raspberry, we use that for whisky punches and it does not tart like the raspberry does. I used to handle Coca-Cola, on calls for Koke I give Koke. I sold Coca-Cola when we had it. That was before Koke, because I could not see where little Willie was getting off at seventy cents a box for Coca-Cola when Koke was cheaper. Before I took this Koke syrup and

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was still selling Coca-Cola, I did not ever hear the terms Koke and Dope used. I will tell you what I did hear when I was selling Coca-Cola, I said to one of my customers I wonder how the dickens he liked so damn much of that stuff all day long; he said, "It has got good dope in it; it makes me feel good, revives me, I feel like sometimes I could go out and spend one hundred dollars when I have only five cents in my pocket." I said I have wondered all the time why you drink this stuff. "Gee," he says, "it puts me on the jump; all I have got now is what you gave me in change, twenty cents out of a quarter, and I feel like I have got one hundred dollars"; that is why he calls it dope; he never called it Koke, just dope. And just the one man, that customer, and I thought he was looking dopey all the time. No one called it that at all but this fellow and I don't know what became of him, he has disappeared; I have not seen him in some time, not that I say Koke made him disappear; I do not know what happened to him, but he is gone.

Deposition of J. C. Mayfield, Jr., for Defendants.

J. C. MAYFIELD, Jr., a witness produced on behalf of the defendants. **[1174]**

Direct Examination.

I am twenty-seven years of age; live in Chattanooga, Tennessee; a son of J. C. Mayfield. I was in Denver, Colorado, I think it was during 1907 and '8, no, 1908 and '9, I believe it was, I do not remember those dates; I think it was during 1907 and '8.

(Deposition of J. C. Mayfield, Jr.)

While I was there I sold Koke and Celery-Cola syrups in Denver, Colorado. I was out there, I guess, a year and a half or two years. I was selling these syrups for myself and my father. Subsequently I went to New Orleans, Louisiana, in 1912. When I got here we opened up the Southern Koke Co., Ltd., that is the present Southern Koke Co., Ltd., when we opened it up there was besides myself, W. McCarty Moore, and L. S. Scott. I purchased everything except the tank and electric motor and screws and bolts; I do not think I bought those, the screws to hold the different parts of the machinery together, when I went to place the order for the pulleys and cog wheels Mr. Scott went with me. J. W. or W. J. Cheevers did not go with me, this man Cheevers did not buy anything so far as I know. We make up this syrup by taking the extract or compound, whichever you call it, and mixing it with sugar, water and glycerine. The extract or compound is shipped from St. Louis, we just took the sugar, water, and glycerine and made the syrup and flavored it with this extract or compound. We never got a bottle of Coca-Cola to test the syrup we were making with. I never got a bottle of Coca-Cola syrup to test it with. I do not remember of ever buying any Coca-Cola syrup except at a soda-fountain to drink right there. I never told W. J. Cheevers that the contents of a whiskey bottle I had was Coca-Cola syrup. Once in awhile I would make a test of the syrup, I would get a fresh supply of compound from St. Louis and I would make up the

(Deposition of J. C. Mayfield, Jr.)

syrup and test that syrup with some old Koke syrup we had to see that it was standing up and was uniform. The first batch of syrup I made up here I did not test with anything; I did not have anything to test it with, I tasted it. A police officer never came to our place of business nor did I ever hand him a glass of Koke and a glass of Coca-Cola and ask him if he could tell the difference. There was a policeman in there. When we first opened up we hired two carpenters to fix the partition for the office and when that work was completed one of those [1175] carpenters got onto the police force and I knew him quite well and he was a privileged character around there and he would come in up there whenever he got ready and ask no one, sometimes he would come in the back door and go out that way and sometimes go to the front door and go out. Mr. Cheevers testified that I had a bottle of Coca-Cola syrup when they first opened up there, and on the following day, Scott made some of the syrup—that the Koke was not then ready, and they all drank Coca-Cola. I do not know anything about that; I was there all the time but I do not remember anything happening like that. If it had happened around there I would have remembered it. Cheevers initials were J. W. if I am not mistaken. I did not tell Cheevers I purchased the Coca-Cola for the purpose of testing. To my recollection he never said a word about Coca-Cola syrup; if he did I think I would have remembered it. I never in New Orleans tested the Koke syrup with Coca-Cola for the purpose of comparing it, or for

(Deposition of J. C. Mayfield, Jr.)

any other purpose. (A paper marked Defendants' Exhibit #55.) That is 100 yards of burlap at 15 cents a yard, fifteen dollars, that was to go around the walls of the office of the Southern Koke Co., Ltd., in New Orleans on Howard St. I purchased it. (A paper marked Defendants' Exhibit #No. 56.) It is an invoice receipt for supplies purchased for the Southern Koke Co., Ltd. I purchased those supplies December 16, 1912. No one went with me when I bought this. Defendants' Exhibit #57 is a receipt for supplies purchased; this covers bevel gears, shafts and pulleys; a receipt for the amount of money, $28.40; Oscar Green is the negro driver. I gave him the cash for the job and he signed his name Oscar Green, the driver for Whitney Supply Co.; Scott and I went together; Cheevers did not accompany us. Those two vouchers, the three vouchers put in evidence, are the only machinery I bought, except the electric motor. Scott ordered it from out of town by mail. That was not purchased here in New Orleans. There was considerable delay in getting the motor here and he got some local electric co., and I went with him at the time, to give him one of their motors out of stock and they took this motor in transit to replace their motor. Cheevers did not accompany us on that trip. When we rented the quarters where the Southern Koke Co. [1176] located itself, Mr. Moore, Mr. Scott and myself went and looked at several places and decided on this particular place where we now are. We agreed among ourselves that that was the location, then Mr. Scott

(Deposition of J. C. Mayfield, Jr.)

left us and went down to the real estate office and signed notes covering the years rent on that property. Mr. Moore, Mr. Scott, and I went around to pick out a place of business; Cheevers did not accompany us, he was not connected with the Southern Koke Co. at that time. Later on he came in there, but not for two or three weeks after that. He did not have anything to do with the organization of the Co., or the purchasing of appliances, so far as I know. When Mr. Scott went around to sign the notes for the real estate, he left us to go up and do that and I do not know of anyone accompanying him. I know some paint men, but I do not remember M. D. Palmer. I do not remember the date, February 13, 1913, but the man came in and I bought five one-gallon cans from him; I told him I wanted the very cheapest red barn paint with a gloss to it; he sent me the paint. I painted several barrels with it; I guess I used a gallon, maybe a little more, of the paint before I noticed how they looked when they dried. They looked very unsatisfactory when they dried, looked as if they had been smeared with red, muddy water. It was quite a little while drying but I guess about as quick as the average paint would dry. It was about the same color I had been using, I guess, but a very dead and ugly color, there was no gloss; it would have been all right had there been a gloss to it. Later on he came up there and I told him what was the trouble, that I could not use it and, he agreed with me that it was a very ugly package. I do not think I told him it was not the right shade of paint.

(Deposition of J. C. Mayfield, Jr.)

I did not tell him I wanted the Coca-Cola shade as near as possible. I did not say anything to him about the color of Coca-Cola barrels; I do not think I did. I did not tell the man that I had theretofore been using a darker shade of paint, and I wanted to get away from it, to as near the Coca-Cola color as possible. The paint I was using was very satisfactory; prior to that time I bought paint from George Jacobs, on the corner of Howard and, I think, Baronne St.; the kind of paint was Aboroid, something like that, Ivoroid, I never ordered by the [1177] name I always ordered by the number, A-29. Defendants' Exhibit #58, dated April 9, 1913, on the billhead of George Jacobs, this covers three one-gallon cans of A–29 paint and some tacks and thread-twine; that was the kind of paint I bought from him. I bought paint from Mr. Jacobs. I would not say positively but I think it was along about March or maybe February. He had just put in this stock of paint and he wanted to sell it to me; I told him I would buy it if he had a very cheap red barn paint with a gloss to it and he said he had. I bought the very cheapest he had; I did not say anything to him at the time I bought it about wanting to get any particular shade of paint; I told him what I wanted was a very cheap red barn paint, with a gloss; I bought paint from Mr. Jacobs up to the time I left New Orleans, some time in June, I think it was, of 1913, four, five, maybe six months I bought paint from him, while I was connected with the Southern Koke Co. here in New Orleans. I did all

(Deposition of J. C. Mayfield, Jr.)

the manufacturing of the syrup and did all the work, the painting and filling of the barrels, the shipping, and assisted Mr. Scott and practically did all the stenographic work. I bought the same kind of paint, same shade all the time from Mr. Jacobs. I heard Mr. Scott's instructions to the salesmen in the office. We always talked about the merits of the goods; I never heard him tell any of the salesmen or any one connected with the Koke Co., to tell dealers that they could substitute Koke for Coca-Cola. I never tell any of the salesmen to sell it to any of the dealers as and for Coca-Cola. While I was connected with the Co., I never heard any of the salesmen telling dealers they could substitute Koke for Coca-Cola. I never heard of any instance while I was connected with the company there, of Koke being substituted for Coca-Cola, neither did I nor Mr. Scott nor anybody else connected with the Koke office or Koke company, so far as I knew, ever authorize anybody to sell Koke as and for Coca-Cola, nor wink at the sale of Koke as and for Coca-Cola. The concern to bottle Koke here to the best of my recollection was the American bottling Co., or some name similar. They bottled Koke a month, maybe two months; after that we changed to the Crescent City Seltz and [1178] Mineral Waters Co., I do not think the first bottler was handling it to suit Mr. Scott. He was not making prompt deliveries, or something came up where he thought it advisable for the interest of the company to change. It may have been on account of not having sufficient bottles he

(Deposition of J. C. Mayfield, Jr.)

was not making prompt deliveries. I know we got labels as quickly as possible; Mr. Scott did but I do not know whether the American Bottling Co., used them or not. We got the first labels from Dallas, Texas. Mr. McCarty Moore, president of the Dallas office shipped them over. I think the labels were used on the bottles put out by the Crescent City Seltz & Mineral Waters Co., from the time they began. I did not hear of any complaints from the dealers, that is the grocery store and bar-tenders and people like that that bottled Koke was sold to, nor did any of our salesmen report that they complained that the bottles did not have any labels on them, nor did any of the salesmen report at the office that they could not sell Koke unless they put labels on it. If they had reported it I think I would have known it. I never saw Koke in any bottle other than splits bottles. I do not know what particular bottle the Coca-Cola people used. They used every bottle that could possibly be made. I do not know what bottle they used locally. (Koke label marked Exhibit #59.) This is a label that came from Dallas, Texas. There was a shoe-box full of them, if I am not mistaken; I guess about fifteen or twenty thousand. They were that same color, design and everything; that same label; those labels came from Dallas. When we first started doing business here, that was in either January or February, 1913—I believe that was the year—we opened up here in 1913. I think several cuts for that label came from Dallas. I think the Crescent City Seltz & Mineral Waters Co.

used that label on its bottles prior to May, 1913. I think that entire batch we got from Dallas was turned over to them. When that batch of labels ran out Scott had some printed, but I do not think he had any of those printed like that. The second batch of labels were different from that; where this label that has the name of McCarty Moore exhibited on it, in that same space we put New Orleans, Louisiana. I do not think it was the same color as that; all this [1179] blue background back of Koke in there, was not in it. I stayed with the Southern Koke Co., Ltd., from the time it was organized and opened until a couple of months after Mr. Scott died, I think Mr. Scott died in May or June, 1913. Cheevers worked for the Southern Koke Co., Ltd., for awhile. He quit two or three weeks after Scott died, within three weeks after he died I think. I do not know why he quit. I think Mr. Wright fired him. Neither did C. H. Whittle nor I. A. Whittle nor anybody else by the name of Whittle ever work for the Southern Koke Co., while I was there. He bought a small amount of stock, I think it was twenty-five or fifty dollars worth. He bought that stock right after Mr. Scott died and then within a short time, the manager who succeeded Mr. Scott bought it back from him. Mr. William Dalton was the manager who succeeded Mr. Scott. Neither did the Southern Koke Co., Ltd., nor anybody connected with the Koke Co., so far as I know, ever pay C. H. Whittle nor I. A. Whittle nor anybody by the name of Whittle, ten dollars one day and twenty dollars an-

(Deposition of J. C. Mayfield, Jr.)

other day for selling Koke. Mr. Dalton gave Whittle part of the amount of money on one day and later on the balance. I do not remember the arrival of some labels from the Houser Printing Co., William J. Spier along in March or April, 1913 but we got labels on different occasions from the local printers. The Southern Koke Co., never had anybody in its employ or connected with it in any manner during the time I was here that had a black mustache. After I left New Orleans I went to St. Louis, and subsequently to Chattanooga Tennessee. When I went to Chattanooga, Tenn. we opened up in the Central Koke Co. I went to Chattanooga in the latter part of December, 1913 and we opened up for business along in January, 1914. We did not bottle any goods there ourselves, we secured a local bottler the Chattanooga Bottling Co., we supplied the syrup to them and they bottled it. The Central Koke Co., had customers in South Carolina. We had a customer in South Carolina known as the K. W. N. Pharmacy. (Letter marked Defendants' Exhibit #60) I received that letter from the K. W. N. Pharmacy about the time it bears date. We had lots of other customers in South Carolina. The date of this letter a number of our [1180] shipments to customers in South Carolina were returned without any explanation. They did not make any kick on the quality of goods, they had been handling the goods prior to that and they were satisfactory, and they never furnished any explanation whatever, although I wrote them, I got no reply from them. We

have a few customers around Chattanooga.

Cross-examination.

There were several concerns about the time of that letter (Exhibit #60) that returned shipments to us. I could give you one in particular, I might get him lined up again but I rather not tell you the names of our customers. There are no others on my mind right now. I would rather not tell you him, I might get him lined up and you people, your detectives would go and scare him again. One name is all I can think of right now. Several shipments have been returned I can mention possibly four or five some were South Carolina, I think all those came in around those dates were from S. Carolina, then we had others from other sections come back, I had no reason of knowing why they came back other than this letter, and the causes stated in that letter. We have had them come back all during the year we have been in business, nor have any reasons except I suppose they were due to instances of that kind, the goods were all right. We never had any sour goods, unless it gets very old, but we do not let it get old it sells off right away. That is the only reason why the shipments come back, only when people would bankrupt, possibly a half dozen have. There is no telling how many shipments came back to us for causes stated in that letter. That is my frank opinion. I got one or two other letters of explanation I do not remember the names. Those letters are in Chattanooga I have got them, one is from Kentucky and stated those same reasons, if I remember the state-

(Deposition of J. C. Mayfield, Jr.)

ments correctly, I do not remember the town, I do not remember where the other was from. The Central Koke Co., was organized and put into operation during January of 1914 and we got together and decided every thing during December, 1913, prior to January 1914 I remember making up some syrup for my own use. There was nothing shipped out prior to January, 1914. I think I made syrup in January, 1914 for my own use. I wanted those people that were interested to taste it, people [1181] interested in the Central Koke Co., are myself, Mike O'Grady, J. C. Cummings and Jesse M. Littleton. Mike O'Grady was in the whiskey business in Chattanooga and he is completely out, I would say in the last month or so. Mr. Cummings is from Chattanooga, he never lived in Memphis. Mr. Cummings owns a big farm, he is a real estate owner, and one of the esquires, Justice of the Peace, and a member of the Courthouse crowd. He is not in the whiskey business at all. The Southern Koke Co., have had their bottlers use three or four different kinds of labels, I think. This #59 was the label sent from Dallas. There accompanied those labels some cuts of that label. It was the first label that was used. The second label gotten up after this one was all disposed of by us. I do not know whether we had labels printed from this particular cut or not. Some were made substantially the same as this #59 label, and used in New Orleans. I do not remember whether there were some printed in New Orleans that had that dark blue back ground or not. I do

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not remember of any being printed like that, other than now what we got from Texas, we got some fifteen or twenty thousand, a shoe-box full, we used those up. Then the next label had a white back ground. I do not think they used the same color of ink as #59, they had more than one colored ink, that is a two colored ink, I think they had some red, the cut of Koke was in red and a white label. That label was printed after those had been disposed of. It is news to me that Mr. Bermudez of the Crescent City Seltz and Mineral Waters Co., testified that a large number of labels were delivered to that concern to be used on Koke and were afterwards destroyed, I do not know of the delivery of the labels that were destroyed by the Crescent City Seltz & Minerals Waters Co., it might have been one of these jobs. Exhibit #59 was used in New Orleans. I do not remember using other labels with the same background in New Orleans by the Southern Koke Co., Mr. Scott may have ordered them and disposed of them, not to my knowledge I was not there all the time and I do not remember. We had another label it was not exactly square but it was not a diamond shape. It had the picture of a lady on it. It was used on the bottles it had Koke on it. We had some Dope labels here, I could not tell you the proportion of [1182] Dope labels, bottlers as a rule never asked for them, but when they did we furnished them I never had any cause to remember it, for it to impress my mind. I could not tell you who printed those Dope labels, I do not know who printed them. I do not know

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who printed the Koke labels, we have invoices for them. They were printed in New Orleans, here is one invoice the last item. That is all we have here. The invoice dated New Orleans Feb., 3, 1915, from the Searcy & Pfaff, Ltd., 724 to 728 Perdido St., and one dated Jan., 31, 1914, by the Sutter-Van Horn Co., Ltd., of 443 Camp St., New Orleans, are the only label invoices that I have with me. I do not know whether all the latter is for labels or not. Part of it is for labels I think. "A" is a proof of a label I could not tell you who printed it, it was never used, but I would not say as to the particular color, that is just a proof. I think that was the proof of that label there, Exhibit #38, I would not say positively though. I do not remember who printed the second label it was printed here in New Orleans, there was a half dozen houses doing printing for us, I could not tell you which one. The A. Sappario Printing Co., did printing for us. Houser Printing Co., did work for us, I do not know whether they were printers or just lithographers and made the cuts, I do not remember whether they made labels or not. I bought paint from George Jacobs. I saw Mr. George Jacobs yesterday evening. I did not take a subpoena out there to him. I think he has been presented with a subpoena, I do not know and I presume he has. I called at the place of business of Mr. Jacobs, quite awhile ago, I told him at that time that the Coca-Cola Co., was suing the Southern Koke Co., Ltd., Mr. Jacobs came running out to meet me when I got off the car, he and I were very friendly and

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asked me what I was doing back here. I told him I was down here getting up evidence in this litigation and told him what it was and asked him if he remembered selling me paint, he said yes, I told him we would want him to be a witness, he said he would be mighty glad. That was all that was said on that particular occasion I was by myself at that particular time. The same day or the following day I called there with one of the attorneys for the Southern [1183] Koke Co., Ltd., Mr. Frank Norman and myself went down there and he was a couple of doors above there and we waited for him, when he came down I introduced him to Mr. Norman and he was very friendly. I told him Mr. Norman was an attorney around wanting to ask him a few questions, and he said he would be mighty glad to answer them, and Mr. Norman asked him if he remembered selling us paint and he said "Yes," and Mr. Norman asked him what kind of paint, he said, "It was the cheapest paint I carried." He got one of these cardboards and showed Mr. Norman, and told him the name of it. I was in a hurry to get back to the office and I was there and when Mr. Norman was shaking him by the hand, he come up and was glad to meet him, I went on back to the office. Mr. Norman was about ten feet behind me. That was all that happened on the two occasions. I had not seen him up to yesterday except when Mr. Norman was with me. To what I have testified to was all the conversation that occurred on both of these occasions. I do not remember the particular streets our office was located on in

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Denver, it was between 17th and 18th street, I was calling it the Celery-Cola Co. Myself and a party from Texas were interested in that concern. I do not remember his name. He was not there but just a little while, he was around on the road. I sold in the City, I did not go out on the railroad work, that was a long time ago. I was selling Celery-Cola and Koke then. We had a bottler, I do not remember the bottling works but I can give you the address, it was on Blake St., on the corner of 22d or 23d, right around the corner from the laundry. I do not remember the name of the bottler. He was only bottling Celery-Cola for me. I did not have a Koke bottler. Our place of business at Denver was a laboratory. I made the syrup like I made it here in New Orleans. The Celery-Cola Syrup was made different from the Koke syrup, a little different in flavor. I sold Koke all around Denver, to the drug stores. I do not remember the names of them. This Celery-Cola Co., was separate from any other company. We kept books and accounts of that Celery-Cola Co., I do not know where they are. We collected up all we could and there was no use lugging the books around I may have thrown them away. On the stationery of the [1184] Celery-Cola Co., was The Celery-Cola Company and the address and telephone number. That is required by law in Colorado. It was an Arizona Corporation, I can give you the address of some of the drug stores, but I do not know whether it was the Koke or Celery-Cola that I sold them, that is the particular name I might give you.

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One of the biggest department stores there, I think it was the Denver Dry Goods Co., I remember I gave them fifty or a hundred dollars worth of tickets to enclose with their statements to people to come to their fountain, I do not remember whether it was Koke or Celery-Cola. If it was Koke it had Koke on it if it was Celery-Cola it had Celery-Cola on it. Then there was another, Shultz Drug Co., they owned ten or twelve drug-stores there. I remember we sold them, but what quantity and which it was I do not know, possibly they bought at one store and delivered to another, or maybe just one store handled it, I could not tell you. Then the Denver Pharmacy, I think that was the name of it, that I sold them some, I do not know which it was that I sold them, the Denver Pharmacy address is between 16th and 17th Streets, between the Brown's Palace and the depot. I sold some out to the city parks, they had some I do not know which it was I sold them, and then a drug-store out there, I sold them some, I do not remember their name, and then there are a number of drug-stores on 15th and 16th streets, I cannot remember the names. I have told you all that I can remember. I am not positive which it was Celery-Cola or Koke. Then there was a "raft" of them, I do not give in that, I do not remember the names. I gave one of those drug-stores I guess fifty or a hundred dollars worth of tickets to send out also, to mail out with their statements at the first of the month, in fact I gave all the drug stores more or less. Those tickets were printed in Denver. Several little fellows printed

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them, I always patronize the little fellow, several of them but I do not know which one printed them. I never tried any other color of paint than red, except maybe a half pint of dark chocolate color if I recollect. It was not satisfactory, I tried it and painted several little kegs, and the following morning they were still as wet as when I put the stuff on there and I could not use it for that reason. When [1185] I said I had seen Coca-Cola in every kind of bottle possible, I meant to be used on a crown machine. A split is the only bottle I have seen Koke in in New Orleans, our bottlers use different bottles, I cannot tell all they use. I saw it in a split bottle, I saw it in Chattanooga in a dark bottle, in a different shape from that and saw it in a white bottle. I think about a seven-ounce bottle. I always gave salesmen a few circular letters I had drawn up, and let them read them over thoroughly, which covered practically every point of instructions. I have not got one, but they were about the merits of the goods and the price and the time they have been used on the market. In that circular letter I told them my father was one of the first men in that line of business that this line of business, this drink, had been on the market that long. Every one that went out for us were given that kind of circular letter. There is one named Williams that went out of here, there is one named Moore that went out of here, and there is one out of Chattanooga named Peck and another out of Chattanooga named Heck Park and another out of Chattanooga named Turner, and there was on differ-

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ent occasions I guess fifteen went out of Dallas, Texas Office, I do not remember the names of all them. I do not remember Helwick, I did not give it to Cheevers. That was a letter dictated by me. I would go to the files and get one of them, no particular letter. I guess there are some of those letters there in the file, I will undertake to find one if I can and bring it down here.

Mr. HIRSCH.—We reserve the further right to cross-examine Mr. Mayfield when the letter is produced.

Redirect Examination.

The reason I did not want to tell the name of the customers was that they could be browbeaten, threatened by the representatives of the Coca-Cola Co. I spoke of a letter from Kentucky and another letter that I got from customers and letters from the K. W. N. Pharmacy, when I go back to Chattanooga I will look up those letters and send them to the commissioner if I can find them.

Mr. HIRSCH.—If he does that we will want to cross-examine him again, Mr. Littleton.

I was not with the Southern Coke Co., Ltd., here in New Orleans, in October, 1913. I [1186] would not say positively they had adopted and begun to use the yellow label on Exhibit 38 before I left here. I had some with me, I got them when I was in St. Louis. I do not remember whether I carried them or they sent them to me. In reference to this conversation Mr. Norman and I had with Joseph Jacobs, Mr. Norman in my presence on the occasion

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of the visit down to Mr. Jacobs asked whether or not anyone connected with the Southern Koke Co., Ltd., had said anything to him with reference to getting any paint similar to Coca-Cola paint, or the paint the Coca-Cola Co. paints its barrels, and Mr. Jacobs denied that. I remember distinctly that that question was asked him, and he said no, they had not.

Mr. HIRSCH.—We move to strike anything as to what the witness has testified as to what any other witness has said, as being hearsay and incompetent testimony.

Objection overruled and appeal hereby prayed and granted.

I left Jacobs' place of business and went on back to the office, about a half block away, and Mr. Norman came right in behind me. When we got there Mr. Norman wrote out what Mr. Jacobs had said, he was at the machine, I do not know whether he dictated it or wrote it himself. Nobody else was present besides myself, Mr. Norman and George Jacobs at the time this conversation occurred, just the three of us.

Recross-examination.

I did not use that phrase "line-up" on cross-examination at all. I think the term I used was "get them in line." I think I meant to get them to buy our goods. I know a salesman named Mr. Duran. I gave him one of these letters, I guess.

Redirect Examination.

I lost all our Celery-Cola trade out there in Denver, the druggist told me he—

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Mr. HIRSCH.—We object to what anybody told the witness.

Objections overruled and appeal prayed and granted.

I found out later to my own satisfaction, I do not know whether it will suit you or not, the druggist told me and the dispensers that people representing or selling Coca-Cola had told them that when a party asked for Celery-Cola to give them Coca-Cola with celery in it, they have the celery extract behind the counter, and they would not put in the [1187] proper amount of celery in the Coca-Cola, but a very improper amount, it would nauseate and they would put too much, very unsatisfactory. I have drank it myself on calls for Celery-Cola and it made me sick, so much celery extract.

Recross-examination.

That occurred in Denver, Colo. I cannot give the name but I can give the address, it was on Arapahoe St., and 16th St., right on the corner. I did not hear any Coca-Cola salesman say that, this man told me that the Coca-Cola man said that. That is not the only druggist. I do not remember who it was, there were several others. I never called the Coca-Cola Co.'s attention to it. I never said anything to anybody about it, only the druggist, I told him it was not right. It was the proprietor, and I remember going to the dispensers behind the counter and telling them they should not do that. I do not remember the names of any of the dispensers. That was sometime in 1908 or '9. I guess this druggist was in the

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business when I left Denver. I would not say positively when I left. I was back in Denver since. I do not remember going around there then. The conversation was that he told me that when a man asked for Celery-Cola to put a little celery in the Coca-Cola.

Mr. HIRSCH.—I object to that as hearsay.

Objections overruled and appeal prayed and granted.

I got a dollar a gallon for Celery-Cola out there. I could not tell you how much the Coca-Cola Co. were getting for Coca-Cola.

Mr. HIRSCH.—I move to strike everything that someone told the witness as being irrelevant and incompetent, about what the Coca-Cola salesman told the druggist and what the druggist told the witness.

Objections overruled and appeal prayed and granted.

Redirect Examination.

The druggist handling Coca-Cola in Denver, Colo., actually put the celery extract into Coca-Cola and sold it to me when I asked for Celery-Cola, and to a number of my friends who told me.

Mr. HIRSCH.—I object to what his friends told him as hearsay.

I drank it myself, it was very sickening and nauseating, they woull do that when I would go in and ask for Celery-Cola. Further deponent saith not.

[1188]

Deposition of J. C. Mayfield, Sr., for Defendants.

J. C. MAYFIELD, Sr., a witness produced on behalf of the defendants.

I am fifty-seven years of age and live in New Orleans. I am president of the Southern Koke Co., Ltd., and president of the Koke Co. of America. I was born in East Alabama, in the country, about five miles from a little town, Rock Mills, Randolph County. In 1887 an uncle of mine had formerly been in business and we sold out in Rock Mills, Ala., and we had a little money, his name was Randall. Mr. Randall noticed an advertisement in the "Sunday's Constitution" where the ad wanted a partner to join in a manufacturing business. He called my attention to it, and I told him to answer the advertisement, and we got a reply from Dr. Pemberton. Well, we were both favorably impressed with Dr. Pemberton's letter, because I had been in business in Rock Mills and had sold drugs, and so had he, that is, plantation remedies, and we had sold some of Dr. Pemberton's specialties, and of course a few letters passed and we both went to Atlanta and had a conference with Dr. Pemberton, and he showed us what he had, went over the whole business, made us his proposition and of course we did not accept it. We went back home and had the matter under discussion and my uncle decided that he would not go in with it. Of course that did not put me out altogether, but as it was not as much money as the Dr. thought he would get, that he would get two thousand from me and two thousand from my uncle; but a few

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days thereafter I got a letter from the Dr. that there was some other men figuring with him that would put in some money, Mr. A. O. Murphy and Mr. Bloodworth.

Mr. HIRSCH.—I do not want to interrupt the story, but if you have not got the letters I object. I do not want to interrupt Mr. Mayfield's story.

Mr. LITTLETON.—I do not think we have the letters, we will prove they are lost.

Mr. HIRSCH.—I object to the reference of the letter.

Objections overruled and appeal prayed and granted.

(Continuing:) We three met in Mr. Pemberton's place of business at Atlanta and went over his business very thoroughly and we agreed to go in with him, that was along, I reckon, in November. I was to put in two thousand dollars, Mr. Bloodworth two thousand, Mr. Murphy **[1189]** two thousand, and Mr. Pemberton was to put in all his business, stock goods he had on hand, goodwill, formulas, trademarks, and everything of every nature and character pertaining to his business for another fourth interest valued at two thousand dollars. There was no agreement drawn up just at that time, but it was agreed and I moved my family to Atlanta, sometime shortly thereafter in December. Mr. Murphy or Mr. Bloodworth was a little bit delayed about getting up their money, and it was some time in January, 1888, that the articles of agreement were drawn and signed by us all. But through the latter part of Dec., in 1887,

and January, 1888, before the articles of agreement were signed, I was around his place of business all the time and was getting well posted as I could, because it was agreed that I was to do the manufacturing, and I think it was in January, I do not know just the date, but from the middle of January, that we signed up. We did some manufacturing at his old place on Marietta St. I have forgotten the number, it seems to me like it was one hundred seven Marietta, somewhere along there, it is below the postoffice. We did not like the place and we looked for a new place on South Pryor St., I think it was the corner of Pryor and Hunter, and we moved down there, maybe it was in the last of January, we moved everything that Dr. Pemberton had. We had the office on the first floor and the laboratory and all this other stuff on the second floor, upstairs. Dr. Pemberton was in bad health. We did not know at the time what was the matter with him but it developed later that he was a drug fiend, of course we were all very much put out by the fact, so much so, that Mr. Murphy was, you might say, disgusted. Dr. Pemberton had a son, an only child, Charley Pemberton, who knew all about manufacturing these specialities and when we first went he was in Louisville, Ky., with some drug firm, but he heard that his father was making a good deal and putting a lot of money into his business and he came back home, thinking, possibly, in fact he discussed it with me, that he would do the manufacturing, but it was agreed and understood that I would do the manufacturing. Naturally it cut the son out

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of a position. He was disgruntled, dissatisfied, and made it up for the old man, Dr. Pemberton. **[1190]**

Mr. HIRSCH.—I object to any discussion that took place, any relation of a discussion, or that he was disgruntled.

Objections overruled and appeal prayed and granted.

Anyway Dr. came to us and told us he would have to give—

Mr. HIRSCH.—I object to what the Dr. told him, it being mere hearsay.

Objection overruled and appeal prayed and granted.

Mr. LITTLETON.—Go ahead.

(Continuing:) That the son contended that he had promised him the Coca-Cola business. Of course it was a bomb in our camps, we did not know what he meant by it. He said he would have to give him that business in order to keep peace. We did not agree to it and we ran along there quite a little while thereafter, undecided just what to do, and he told us we could make the same goods and call it something else.

Mr. HIRSCH.—I object to what the Dr. told him, as being hearsay.

Objection overruled and appeal prayed and granted.

We all discussed it in the Dr.'s presence and agreed that we would make the same goods and call it something else, the same formula.

Mr. HIRSCH.—I object to the agreement and the

discussion, as being hearsay and move that it be stricken.

Objection overruled and appeal prayed and granted.

(Continuing:) Among the names discussed and talked about was Koke, some of them suggested Yum-Yum. We may have put out some little under the label Yum-Yum but I do not have any recollection about that. This was possibly in April or May, along there, and we commenced thereafter selling to our trade that had theretofore been buying Coca-Cola, we did for some time, however, sell some Coca-Cola to the old Coca-Cola customers. We had considerable money in the bank, all we had put in as the working capital. I was not the chemist but I was doing the manufacturing and I made up a considerable collection of goods, of every kind, and of course made up the Coca-Cola syrup. After we did not ship it out as Coca-Cola or would not ship it out as Coca-Cola we shipped it out as Koke. Mr. Murphy sometime in the latter part of May or June severed his connection. He was still dissatisfied with the way he had been treated and we agreed to relieve Mr. Murphy, that is, allow him to draw out, and we drew up an agreement to that effect, and he drew out and went home, back to Barnsville, Ga. Dr. Pemberton and Mr. Bloodworth and myself continued the [1191] business as three partners. A short time thereafter Dr. Pemberton died, I do not remember just when it was, how long, in the same year. We had to make a settlement, of course, with the Pember-

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ton estate, Mrs. Pemberton and her son, particularly with Mrs. Pemberton. We did not have the money to buy her out and he did not have the money to buy us out and we did not care to be connected with her son Charley, who was disagreeable, a sort of a drinking kind of a boy, and we made a settlement whereby Mrs. Pemberton took the formula and business of the Indian Queen Hair Dye and we had quite a lot of manufactured goods and we gave her one-third of the manufactured products. She did not want to leave it in our place of business, she did not care to have it there, and she made arrangements to have it stored with Asa G. Candler, that was hauled up to Mr. Candler's place of business. I told Mrs. Pemberton, however, that as soon as we worked off our manufactured stock I would help her dispose of hers, which I did. It was not long, maybe eight months or a year, I took back all, bought back Mrs. Pemberton's manufactured goods, sent up there and got it. Then Mr. Bloodworth and I continued with other specialties we had, that is, the manufactured specialties. We had then Wine of Coca, Koke, Globe Flower Cough Syrup, and his blood medicine, Pemberton's Compound Extract of Stillinger was the name of the blood medicine. That was along up in the first part of 1888 or the first part of 1889. We moved then around from the South Pryor Street place to Trinity Ave., in a little cottage we got for a good deal less money. We continued around there for 1889. Mr. Bloodworth kept the books, I did what manufacturing was to be done, there was not very much, however,

only except the syrup. I do not think we made any of the other specialties because we had a good stock on hand, but of course were disposing of it. We decided that we did not have money enough to push all those specialties and we would get rid of the manufacturing of patent medicines and push Koke only, which we did right along, and sometime in—maybe it was 1890—'92, I met an old friend of mine in the Kimball house in Atlanta, a fellow named Ealey, a fellow from West Point, Ga. He was a tradesman. He asked me what I was doing [1192] up there and I told him about these specialties. We were not pushing Wine of Coca or Globe Flower Cough Syrup, and one word brought on another until we made a deal there in the Kimball House for the Wine of Coca, which we considered sort of dead stock to us, for we could not push it. That is, we did not have the money to use it, it was good stuff, however, but we did not have the money to push it. It was sometime in the latter part of 1902 or 1903—'93, Mr. Ealey wanted to put some of his specialties on the market and I met him back at Atlanta and he come after me to help him put that on the market and he decided to put the Wine of Coca in a syrup form as well as in the wine. The only thing to leave out was the wine, and put in the water and sugar is my recollection, and the only change to be made, and he organized the Co., the Wine of Coca Co. He had been dealing in real estate quite a little while, and we agreed to go into the real estate business, and we formed the partnership of Ealey and Mayfield, the

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real estate firm, that was in '92 or '93. We continued in the real estate business up until the latter part of '98. At the same time he, however, Mr. Ealey with his friends and associates, I helped him all I could, pushed the Wine of Coca business. We handled the stock of the Ealey and Mayfield firm, handled the stock of that company around trading in the real estate deals and Mr. Bloodworth all the time was looking after our books, of the Pemberton Medicine Co. We had considerable accounts on the books, we disposing of our manufactured patent medicines and pushing out Koke as best we could. Mr. Bloodworth continued along there with me until after the Exposition there, it seems to me it was in 1900, if I remember, and he decided to go to Macon, Ga., and go into the cotton business. He had everything in pretty good shape and he thought he could do more down there in that business, and I bought him out. Of course my wife and sons, along there, in the meantime were helping Mr. Bloodworth as best they could. I would help of evenings and if anything came up we would discuss about the business and after Mr. Bloodworth went away I employed a man by the name of McCowan, who I think was in the newspaper busines, soliciting [1193] advertising, something that way, in Atlanta, to give me the time, anyhow he looked after my Koke interest with my son too, of course with my help from time to time up to about the first of '99 or last of '98. The Wine of Coca Co. people decided that they wanted to open an office in Boston and they wanted me to go to Bos-

ton to establish same there. I forget the man's name up there he had money there and as he wanted me to install equipment, which I reluctantly did, and I did go, and I thought I would just move my Koke business to New York. I did not know but what I would stay there after getting the Wine of Coca people lined up, and my son went on ahead of me and picked out a little place in Jersey City. I would go over there often from Boston and manufacture goods for him. I did not manufacture every time, it was in the winter, but I would go over there and see how he was getting along. But, was not there very long, maybe two or three months. I got a letter from my father, who raised all my children, the other three children were then living with him, one of them was sick and I decided it would be better for my business and friends to go back down south. So I left Boston people, I was practically through with them, anyway. Told my son that I was going back home, which I did. I made a bee-line to where my children were. The child was not very sick. I stayed there two or three weeks, that was in '99, sometime in the latter spring, maybe April or May, somewhere along there. That was at Roanoke, Ala. Then I went back from Roanoke to Atlanta. Of course all my customers were Southern, Atlanta and the Southern States. I corresponded with them and let them know I was in Atlanta, called on what others I had there, and I did some manufacturing in Atlanta, supplying the trade for two or three months. Then I met an old friend of mine that lived in Birmingham.

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I told him what I was doing, and I was undecided as to whether to stay in Atlanta or go some place else and he and I made a business arrangement which was satisfactory and I moved from Atlanta to Birmingham. That was in '99. I had been experimenting a little bit along in Atlanta and other places making other beverages and I had decided that a Celery Cola—celery was a good tonic and it might [1194] be a happy hit to make a beverage and call it Celery-Cola and I explained that to him and he said that struck him exactly, too, and he said he thought that would be a winner so we opened business in Birmingham and started a little bottling business, and bought a little— the first we bought was a Hutcheson plant, the Hutcheson stopper, but that did not last very long. He swapped that off for another machine, the crown machine. And after I made arrangements with another friend of mine, Mr. Brittian, to push Celery-Cola in Birmingham and adjacent territory around there. I had another friend in—I had been corresponding with in St. Louis. I went to St. Louis to see if I could not organize a company there. It was a bottling company, and made arrangements to get the goods on the market, but we did not succeed, however, but I did continue to advertise and circularize and take care of what customers I had back south with goods out of St. Louis. Maybe I stayed there until 1900, sometime in 1900. Then I went from there to Nashville. I was all the time making Celery-Cola and Koke, and in Nashville I lined up a bottler, Diehl & Lord. They preferred the Celery

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Cola name and bottled Celery Cola for several years, I do not know just how long, but all along my friend, Brittian, in Birmingham, was doing a little business. Of course, none of them, none of my agents then or now, ever had any interest in my formula or trademark. They always bought their compound from me and I had arrangements that I could do my manufacturing in their places of business without cost, and have my materials come there. If the Birmingham plant needed material, needed compound, if I could not run down there and make it I would ship it to them from whatever point I was located, Nashville, St. Louis, or wherever we might be. In 1900, maybe 1901, along there somewhere, I met a friend from Tennessee, that had a lot of oil leases, and I made an arrangement, deal whereby I was to become interested in his oil leases, and I promote in Nashville an oil company called the Mayfield Oil Co., and together with his leases and others we secured in Southern Ky., and East Tenn., we made for a while a success of the oil business. We thought it was going to be a success. We had thirty some odd producing wells. In [1195] promoting the company I had quite a lot of promoting stock. Now, I will go back to Birmingham with my friend Brittian. Brittian got one of his friends interested, a man by the name of Schuyler, a man who had put some money in with him and was pushing the Celery-Cola business very satisfactorily. Schuyler was auditor of the Asheville Iron Co., and a very prominent business position and a very influential and very nice gentleman.

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I thought he was all right, and he had a little spare money, and he took a little interest with the O. L. Gregory Vinegar Co., of Birmingham; he had a half interest, I believe, it was, and he put about three thousand dollars in the Celery Cola business of Birmingham. Well, maybe, I had a pretty good thing in the oil stock; I was getting money on it right along, and he needed a little money to push his Vinegar interests; he wanted me to take over his interest in the Celery Cola business there, which I did. Well, that left it with the little bottling business there in about 1901, the Birmingham agency belonging to Mr. Brittian and myself. We sold that plant, Mr. Brittian did, to a man named Fox. He got cash and a note for twenty-five hundred dollars. Mr. Brittian sold that note to the Jefferson County Savings Bank of Birmingham without recourse and then he wanted to go to St. Louis and start a Celery Cola Bottling Co., which I agreed for him to do. Mr. Fox continued the business there in Birmingham, bottling Celery Cola; I never made any goods in Mr. Fox's place of business; I shipped him from Nashville. I was busy there with other companies and with the oil business, and I supplied him with Celery Cola and Koke; Mr. Brittian, I do not think, ever bottled any Koke, but he did bottle Celery Cola, that was in 1902—maybe 1901 or '2. Well, Mr. Fox went right along, someway, I do not know just how it was, anyhow he left the city for some reason and we never did know where he did go to or what became of him. He owed quite a little bit of money for compound that

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I had furnished him, and the bank had this mortgage and they foreclosed on him. They wound up the business and some other parties in Birmingham, a man by the name of Ensley, Ensley & Moody, bought the plant. Of course, I was there and Mr. Schuyler were all present. I was— [1196] at that time Mr. Schuyler owned all the O. L. Gregory Vinegar Co., and changed it to the C. H. Schuyler Vinegar Co. Well, the oil stock was still advancing, and I had quite a good block of it, and he wanted me to take a half interest with him, in the C. H. Schuyler Vin. Co., which I did, and I paid him two thousand dollars for a half interest. In less than six months that went up in smoke, and this bottling plant was moved into it, we had room in the Vinegar Co., for it. Mr. Schuyler got in on the wrong side of the market; I don't know, and our business failed. It was necessary for me to take hold to save what could be saved and pay—there were some other debts against the company. I had to close out and move out from Nashville and St. Louis and go down there to try and save myself, and I took over the bottling plant. That was in maybe 1903, along there, the latter part of 1903. Well, then I run the—I changed the Schuyler Vinegar Co., they run it a little while under that name; I discontinued that name, however, and went on under my own name of J. C. Mayfield Manufacturing Co., we were running in Birmingham, the very beginning, with Brittian under the name of the J. C. Mayfield Manufacturing Co.; then I owned practically the whole thing. Then I stayed there and pushed that

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business from 1903, '4, '5, '6, maybe '7 and '8. I was first on S. Twentieth St., in a big building and I had more room than I really needed. Then I moved over on Morris Ave.; I do not know just what time, but I continued there. We, of course, ran the bottling business; that was a local business. I run my Celery Cola and Koke business supplying the trade wherever we could get the business. My sons were on the road; I did considerable circularizing sending out samples, securing business in every way we could. We bottled not only Celery-Cola and Koke, but we bottled other flavors, but they were our specialties and we were pushing those, and at the same time we had another specialty that we had a pretty nice run with, Pepsi-Nola. When we—about 1908 my daughter married in Birmingham, and I decided there was more money in the specialty business, not to have so many things, and I gave my son in law the bottling business, with the understanding that he raise up a company, **[1197]** form a company there and push the business; he only took, however, the brand Celery Cola, is my recollection. I then came west. That was in the latter part of 1909. I had, however, my sons, and I had been back in Dallas all along, so many of my sons are young and everything else, it is pretty hard to bring all this up at one time, but one of my sons, J. W., had been out to Dallas, Texas, and started an office out there, in the same line of business we had back in Birmingham, and he had gotten a bottling business in Dallas, started to bottling Celery-Cola. The bottler seemed to prefer that

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label, but he did a general extract business. I do not know whether he shipped any syrup or not, but he sold Koke and Celery Cola and there we had a little line on another beverage, I believe it was Pepo-Ade. I was all the time experimenting, and—well, that was—he went there in '94. Nineteen and four. He lost his health and the younger boy went out a little later. They had quite a little business built up. Then the older son made one or two trips over Texas for him. He filled the orders from Dallas. Of course, the boys were making a living and sowing seed for my different specialties. Well, then when I went west I stopped at Shreveport in 1909, and I got a bottler there started. I have forgotten his name now; I believe it was Robinson Bros., in West End. But, to go back to Birmingham, when I left there with my son in law and his associates in the bottling business we supplied them with other compound from St. Louis, sometime during that first year he was in business, a wholesale drug firm in New Orleans ordered a gallon of Celery Cola syrup. They expressed it to them and it was carried down through their shipping department, turned over to a chemist, a U. S. chemist, and they reported that they found Cocaine in Celery Cola. I was notified of it; I was out west. I notified my chemist Van Dusen about it. Of course, we knew it had no cocaine in it when it left the St. Louis, and we could not account for it. Mr. Van Dusen came on up to New Orleans and explained here to the chemist that there was no cocaine in our goods, but they contended that they found it in that

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sample. But, we had up to that time of the passage of the pure food law, and when it took effect, of course used the fluid extract of Coca and we had the goods all over [1198] the country in the hands of the bottlers and the fountain men. We tried to get it back; we thought we did have the most of it back. I remember very well of destroying quite a lot of it. But it was found that some of this returned goods was in the plant there and they used it. We had two or three ways to account for that, either they used some of the goods made prior to this act going into effect, which had been shipped back, or they had experimented a little themselves, or had been put in after it left the factory. I did not like to see my son in law lose out entirely in Birmingham and I made him a deal where I got him his interest back in the Birmingham Celery Cola Bottling Co.; I would not say but I do not believe I was ever a stockholder of record but they did get a suit against them back there in the court in connection with this sample of Celery-Cola that had cocaine in it, and my name was mentioned in the suit. The other partners who were connected in the business cared nothing about it, because the business had been wound up by the bankrupt court and there was no defense, is my understanding; in fact, I was never served with a summons was not present and presume they just took the shortest and quickest way out of it. Well, that went down against us, under those conditions against Celery Cola which virtually murdered it unjustly. My competitors used it against us, and I saw it was an uphill pull to try

to overcome a thing like that. Well, we had had a good trade on Celery Cola and a good trade on Koke, a pretty fair trade on Pepsi-Nola, and I made up my mind then to give my entire time, push and energy to Koke because it had not the black eye that Celery Cola had. Well, when I was in Dallas, along after my son had gotten a little business started in Dallas, and because I made a deal, some deals with some parties on Celery Cola, they were pushing Celery Cola, but they did not have much money and they got a man interested with them that was worth money, but the money he put in was borrowed money and he went to the bank to borrow it, and when it came payday they got hard up. That was along in 1910. They wrote me to Shreveport that they were in deep water, that the bank was pressing them and for me to come over. I went over and conferred with them and they wanted to turn me back this [1199] territory and business and give them a chance to get on their feet. I investigated and saw it was impossible. They would not agree to cancel it entirely, so I thought best to keep the business alive for them and then have to give it back and the Celery-Cola having a black eye through the decree made up my mind to push Koke in Texas. I went to Ft. Worth and pushed Koke there. I had my youngest son come from Denver and join me in Ft. Worth. I got a pretty nice business started in Texas and contracted with a man by the name of Clarke for the State of Texas and showed him what I was doing, and turned everything over to him, and he was to push the busi-

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ness and keep it going. Then I went to Little Rock, working up a trade there. In 1911 my son came to Little Rock and went on the road, talking and pushing Koke. I built up a nice trade there. I gave a man by the name of Parvin a contract like I did Clarke.

That was in 1911. I heard from some traveling man along there that—I forget just how I got it, there was a firm in Murfreesboro that owned a trademark on Koke and I was spending lots of time and money in building up the business for them. The man thought I knew of it. I really opened—I do not remember the name just now, but I did not write the Murfreesboro people. I went to see them and I found out it was true. They were doing a pretty nice business they said and showed me their registered trademark. I explained to them my long usage. I knew I could win out in the courts but I did not care to do that. They had done some advertising, popularizing my Koke and finally I said let's see if we cannot get together on a business proposition. Well, we did. [1200] I bought the Koke for the U. S. except the state of Tenn. I then went back to Dallas, Texas. Mr. Clarke in the meantime had a deal pending with some parties in Dallas for his contract in Texas. The party who was figuring with Mr. Clarke wanted the contract providing he could get the state of Okla. and he wanted Ark. I got the Ark. territory back from Mr. Parvin and closed up the deal with the Dallas party, Mr. Moore. They organized the Koke Co., of Texas. They met with success and liked the business and wanted to

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open offices elsewhere. We agreed on a sort of option on La., Miss., and Ala., with an office at New Orleans. Mr. Moore came here and made the deal with Mr. Scott. I was not present but knew of the arrangements. I was in Little Rock resting. My youngest son who was familiar with the business, came here and assisted Mr. Scott. Mr. Scott and my son kept me pretty well posted. Mr. Moore was president of the company and I had a very little to say. I came back when Mr. Scott was killed. Some new arrangements had to be made. Mr. Dalton took the management. He was not experienced in that line of business. Mr. Dalton and my son got after me to come down and relieve them take the office and look after it, which I did, in Sept., maybe 1913. Since [1201] that date I have been in actual charge. The directors held a meeting and Mr. Thomas L. Wright, who was then acting president, resigned and I was elected. I believe that brings me up to date. Of course there is a lot of little things and changes that I have not told that you can refresh my memory on. Those letters I got from Dr. Pemberton back in 1887. I have not got those letters now. They were destroyed long ago. I did not keep those things that far back. Defendants' Exhibit #13 being a photograph of a page of the Atlanta Constitution of October 2, 1887, is the advertisement that I spoke of that I saw in the paper and answered when I later got the reply from Dr. Pemberton. (Reading:) "Wanted an acceptable party

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with two thousand dollars to purchase one-half interest in a very profitable and well established manufacturing business, absolutely no risk. A guarantee of 50 per cent profit on investment with possibilities of much larger profit. A rare opportunity to the right party. A full investigation solicited. For particulars address with your real name business 8½ Marietta St., Atlanta, Ga." 8½ Marietta St. was not the place where Dr. Pemberton was doing business. I do not think Dr. Pemberton ever explained to me why he put that in the paper that way, but the facts are Dr. Pemberton owed a good many little bills around against him, his business, and I don't think he wanted his creditors to know that he was selling out, sorter wanted to get hold of some money to ease things up; that is the impression he made on me.

Mr. HIRSCH.—I object to that and move to strike it out as hearsay testimony.

Objections overruled and appeal prayed and granted.

We answered that advertisement immediately and got a reply back, and it was a few days thereafter. We were not in business, but as before stated were seeking an investment. I would say that we went possibly as soon as we heard from our letter. When we went to Atlanta we went to Dr. Pemberton's place of business to see him. His place of business then was 107 Marietta St., that is my recollection. He was doing business under the name of Pemberton Chemical Co., it was a two-story brick residence.

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He was still in business. He had an office in the front [1202] room, the back hall had his manufactured goods in it, all the first floor was used for the laboratory, his basement was also used, and Dr. Pemberton lived in the second story. He was then making Wine of Cola, Coca-Cola, Globe Flower Cough Syrup, Indian Queen Hair Dye, Triplex Pills, he made a liniment, Mustang Liniment, his blood medicine, Pemberton's Stillinger, Pemberton's Compound Extract of Stillinger; I believe he had a preparation he called lime juice and ginger. That is about all I can remember now. During my visit there in 1887 I saw Dr. Pemberton actually making Coca-Cola syrup. Dr. Pemberton and I had agreed to go in business, regardless of whether the other people came or not. I moved over and he was a sick man, as I said before. I was helping him. He was teaching me how to do these things. I helped him and was pretty handy at that as I had formerly been in a drug-store, knew how to manufacture some of the preparations before we actually took charge, and I, of course, did not know the formula as to how they were made, but I helped him with the Coca-Cola syrup. We manufactured there all those things in a small way, sort to have a little stock on hand, to take care of the orders. It took us nearly past January to find the new place to move, and we had those things manufactured up already, we commenced manufacturing right along when we agreed to go in with him. Dr. Pemberton had everything on hand

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we would need to manufacture the Coca-Cola syrup when I went there. We never bought anything new additional thereafter. He had percolators to percolate the coca leaves and get the extract of coca, and coca leaves on hand. He had a copper kettle to dissolve the sugar and bring it to a boiling point, the water and sugar, these other things were added, that was about the only machinery he had for the purpose. A written contract of partnership was drawn up between us. I have not a copy of that contract now, nor the original. Mr. Murphey was the office man, Mr. Bloodworth was the road man, and I was the laboratory man. These papers were turned over to the office man, and after Mr. Murphey left us, Mr. Bloodworth was the office man, and he took charge of all papers of the company. I never had them in my possession except as being connected with the firm. The terms of this contract were just about like all other set contracts drawn [1203] up by a good attorney. It recited all the facts, we three were to put in two thousand dollars cash, Murphy, Bloodworth, and Mayfield, and Pemberton was to assign to us his assets, goodwill, trademark, formula stock on hand and everything he had pertaining to that business he had for one-fourth interest. We were all in, it was a four-cornered arrangement, the partnership we had. The right to sell and manufacture Coca-Cola was included in that contract. It was a four partners, we each had a fourth interest, in the agreement I had a fourth, he had a fourth, he deeded to us, you might say, a three-fourths, and re-

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tained one fourth. He put in his business against our six thousand cash, which made everything he had valued at two thousand against our each two thousand dollars. I actually paid two thousand dollars into the partnership, Mr. Bloodworth paid in two thousand, it strikes me that Mr. Murphy paid fifteen hundred and gave his obligation for five hundred; anyhow we all had a fourth interest, and we accepted his money, and if we gave paper we accepted his cash.

Q. 49. Now, was the formula for making Coca-Cola made known by Dr. Pemberton to the members of that partnership at that time? A. It was to me.

Q. 50. Now, explain, did he just tell you what the formula was, or how was that, how did he make it known to you? A. He got his formula book and called it over to me word for word before we left the Marietta Street place, before the contract—Oh, well, anyhow, it might have been after, but he was in bed sick and we thought we ought to have it, you know, we were looking after things and we had paid [1204] in our money, and I think he sent for me and I went up to his sick bed and he had the formula book, and I brought me a book and I copied everything, word for word, as he give it out, with complete instructions.

Q. 51. What—was the formula for Coca-Cola copied by you at that time? A. It was.

Q. 52. What became of that book, Mr. Mayfield? A. I do not know whatever did become of it, that

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book. It may have been I was—I reckon it was a little book, anyhow, I had copies of it, complete copies either on a book or paper.

After the formation of this partnership the partnership took the name of Pemberton Medicine Co., under that name we manufactured Wine of Coca, Koke, Globe Flower Cough Syrup, the blood medicine, lime juice and ginger, Coca-Cola, Indian Queen Hair Dye, and a short time thereafter the Dr. got up a new remedy called lemon and orange elixir, and we manufactured that also. We were going into business, and did not know which was best, and we made a stock of all, we had the money to do so. After the formation of the partnership I made the Coca-Cola syrup. When I made up my first batch of Coca-Cola syrup Dr. Pemberton was there telling me, I had to do all things, and he would stand around and tell me how to do those things. When I went down to his place 107 Marietta street **[1205]** and during the time I was there no one else was connected with Dr. Pemberton. I did see his son later on. Nobody by the name of Lowndes or Venable was around that place then, no one by the name of Walker or Mrs. Dozier was around there. No one else was at that time manufacturing or selling Coca-Cola so far as I know. Dr. Pemberton never told me at that time nor at the time I entered into the written contract of partnership that he had sold Coca-Cola to anybody.

Mr. HIRSCH.—I object to anything that Dr. Pemberton said, and move to strike the answer.

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Objections overruled and appeal prayed and granted.

I never had any knowledge or information of any kind that anyone else, or anybody had any claim, right, title or interest in the product Coca-Cola, or the business of manufacturing or selling anything connected with the trademark Coca-Cola. When we left 107 Marietta St., and went down to S. Pryor St., we moved everything "lock, stock and barrel." Doctor had a very large percolating tank for his Wine of Coca, it was ten or twelve feet high, and he had a big counter with holes in it to receive his percolators. We carried that along, and the percolators to percolate the coca leaves, we moved our manufactured stock—manufactured and on hand, labels, books, kettles for making Coca-Cola and everything that was there. I attended to moving the stuff myself, it was my business to look after that. We moved to S. Pryor St., on the corner of Hunter. We continued to manufacture and sell Coca-Cola syrup under that name, for two or three months. After we began to manufacture this Coca-Cola syrup, we sold it. The trade was small. I do not suppose we ever shipped any in the beginning over five gallons, some gallon jugs, and the five-gallon kegs was the most sizes that we put it in then. We might have shipped sample quart bottles or something like that to good people, considered that was more of a gift than anything else, a sample, in the bottle of syrup. We put labels on these containers to indi-

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eate the contents of them, it had a label Coca-Cola. (Defendants' Exhibit #21, being a photograph and certified copy by the Patent Office of two letters, dated March 8, 1888, from the Pemberton Medicine Co., to the Commissioner of Patents and signed by A. O. Murphey). That is the first letter-head we got up. Mr. Bloodworth, [1206] who had been the cashier for the bank, we considered knew more about getting up a neat letter-head than we did, and we instructed him to get up a nice letter-head; of course, there is several things left off of there, a thing we valued most was our blood medicine, he could not mention them all without making a mess of it, I reckon, as he figured it, Coca-Cola happened to be one among the others which were left off. At that time the Coca-Cola business was small, then too, it was an off season, January, in the winter months is not a good soda-water month. We did some little business, we were advertising and pushing things we thought were in season. Mr. Murphy turned over to me at one time some correspondence addressed to him purporting to be from Dr. Pemberton. That was some time last year, 1914, after these suits were filed against me by the Coca-Cola people. I turned over all the correspondence he gave me to you, I turned over all I received. One of these letters is started and it is just the first page of it, the rest of it is missing. (Exhibit #19.) I do not know what became of the rest of that letter, it was not turned over to me. I sent you everything I received from Mr. Murphy. (Exhibit #16.) The letters I re-

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ceived back there were on stationery of that kind with that letter-head, it was this letter-head, the same kind. After we had manufactured and sold Coca-Cola for two or three months Dr. Pemberton stated to us one day that he had decided to give Coca-Cola to his son. Not the entire business, just Coca-Cola.

Q. Now, did he tell you that he had given—

Mr. HIRSCH.—I object to that form of a question. Let the witness tell if he is going to be examined, don't you tell him, and it is hearsay.

Objection overruled and appeal prayed and granted.

A. I said that he did.

Mr. HIRSCH.—I object to what Dr. Pemberton said as being hearsay.

Mr. LITTLETON.—Go ahead and answer the question. He said, and in fact I knew he had been having trouble with his son, he was an unruly bad boy, and he reported to us that he would have to give it to him to keep peace in the family, but we did not agree, this was after I bought a fourth interest in Coca-Cola, after we had been manufacturing and selling and going around satisfied with the business. The old Dr. was sick and kept fretting around about it and said it was [1207] not of much value, and did not think it had been very long on the market; we had the same formula and could go on and make the same goods under some other name and he would appreciate it, and he would let his son have it. The other partners and I did not agree to any sale or

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assignment of the business of manufacturing and selling Coca-Cola or the trademark, goodwill or anything connected with Coca-Cola, to anybody. We went ahead and sorter accepted the situation in a way, we never did sign up any agreement, we tried to have peace in the family if we could, and we discussed among ourselves what to call our Coca-Cola and agreed upon the name Koke. Prior to the time we agreed upon the name Koke, I never heard of it as a beverage, in fact Coca-Cola was not known so far as that is concerned but very little. I would not say who suggested the name Koke. No other soda-water, or cola drink or beverage had been sold prior to that time under the name of Koke. The product Coca-Cola, prior to the time that we adopted the name of Koke, never had any nicknames applied to it by the public. It was not old enough to have a nickname; it did not have a name of its own up to that time. Coca-Cola was not a well-known article at that time. At that time I had never heard of Koke, we adopted it on account of its being new and the coined word, that is it, that is an easy word, short. It was something new, the others had never heard of it.

Mr. HIRSCH.—We object to what the witness says the others had not heard of. It is at most incompetent testimony.

Objections overruled and appeal prayed and granted.

We used a label to designate the goods, of course,

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and placed on the label, Koke, spelled k-o-k-e. The product was no different from the product Coca-Cola, there was no difference between the product which we thereafter labeled Koke and Coca-Cola. We continued to manufacture Koke by the same formula that old Dr. Pemberton turned over to us as the Coca-Cola formula. After we had changed the name of this product from Coca-Cola to Koke we received orders from our older customers for Coca-Cola, we shipped them Koke and wrote them a nice letter and explained the situation and conditions, which were always satisfactory. I never heard any complaints. (Defendants' Exhibit #23, page 1 of which seems to be a label of Pemberton's French Wine of Coca). That is the label with which [1208] the French Wine of Coca was labeled. After we had adopted and applied this name Koke to our product the partnership as then organized continued up to about, I believe some time in June, Mr. Murphy withdrew. Exhibit #22 is an agreement whereby we agreed to let Mr. Murphey withdraw from the partnership, we all signed that. That is my signature, those are the signatures of the other parties. I recognize them as the genuine signatures. Exhibit #22 correctly sets forth the agreement we entered into at that time. After the retirement of Mr. Murphy we continued the business as a partnership, us three, instead of four, Mr. Murphy had withdrawn, Mayfield, Bloodworth, and Pemberton. We continued to manufacture and sell

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Koke. After Dr. Pemberton died, Mr. Bloodworth and I had a conference with Mrs. Pemberton. Of course we had to come to some kind of agreement, and as before stated we did not care to go on with the partnership and we wanted to divide up. She took the Indian Queen Hair Dye and what manufactured stuff we had of that kind and what material we had, bottles and things, in the settlement; we had quite a lot of manufactured goods, we gave her a third interest, a third of what we had on the floor. We continued to do business after Mr. Murphy retired under the name of Pemberton Medicine Co., the same name. We continued to manufacture and sell Koke up until the death of Dr. After Dr.'s death I do not know that I took it myself, but I sent it up there to the store of Asa G. Candler for Mrs. Pemberton. I presume, I have a faint recollection of going along with the draymen. That was her one-third of the manufactured medicine. There was no Koke in that batch. After that Mr. Bloodworth and I continued in business, we had a good stock on hand and did not manufacture any more except Koke. He and I went on as partners. He and I owned the business equally. Mrs. Pemberton did not get any interest in Koke or Koke formula. Mr. Bloodworth and I continued to manufacture and sell Koke until 1895, right after the Cotton States Exposition, after the fair there, 1895. And then I bought out Mr. Bloodworth. I do not remember what I paid him for his interest. We had a good many accounts on the book from the [1209] sale

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of our patent medicines. He had collected those up and in the settlement those were considered. I do not think he paid me anything, and I do not remember how much I paid him over and above them. After the retirement of Mr. Bloodworth, I continued to manufacture and sell Koke in Atlanta, until the latter part of 1898, about Christmas I left there. The kegs for shipping the Coca-Cola syrup back in the early part of 1888 were painted red. After that we painted them red, always painted them red. No other color besides red. We manufactured and sold this Koke in Atlanta, up to 1898, we put labels on the containers, Koke was on the labels. After I left Atlanta I went to Boston. I stopped in Jersey City, my son preceded me a little, and we looked up a cheap place. I did not know how long I would be in Boston and did not want to leave my son alone in Atlanta. I went over there one or two Saturday nights and spent Sunday with him. We did nothing there to amount to anything, just happened to be there, just a small link in the chain, and I mentioned it. The four members of the Pemberton Medicine Co., Mayfield, Bloodworth, Murphey and Pemberton applied for a corporate charter under the state of Georgia. Defendants' Exhibit #62 is a certified copy of that charter we took out. We never organized under that charter. After I had bought out Mr. E. H. Bloodworth I continued and continuously manufactured and sold Koke up to the organization of the Koke Co., of America. I have sold it in re-

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ceptacles labeled with the name Koke during all of that time, sometime stenciled. I guess you would call that a label. When I went to Shreveport I organized a Koke Co. there, the same was the Koke Co., Ltd., I believe. When that company was organized I did not sell them the business and goodwill of manufacturing and selling Koke and the trademark et cetera. Paper marked Defendants' Exhibit #63 is the charter of the Koke Co., of America. I sold the Koke Co., of America all my interests in everything I had in the Koke business, the trademark I have described, formulas and everything of every nature and character pertaining to Koke, the Koke Co., of America is still the owner of that. After the organization of the Koke Co., of America and the sale to it of Koke I had the trademark Koke registered in the **[1210]** Republic of Mexico. Paper marked Defendants' Exhibit #64—that is the certificate of registration. It is in Spanish if you can read it, it is in October 14th, I can read that much of it, the balance of it I cannot read. I had the trademark registered in the Dominion of Canada, that is, the Koke Co., of America had it registered in the Dominion of Canada. Exhibit #65 is the certificate of registration in the Dominion of Canada, dated the 4th day of March, 1913, I think. The Koke Co., of America has continuously owned the Koke business and the trademark Koke from its organization down to date. The Koke Co., of America sell to their agents, give them license to do business in a certain

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territory. The Southern Coke Co., Ltd., is just an agent to the Koke Co., of America, a selling agent. The Koke Co., of America, grant the Southern Koke Co., Ltd., a license to sell its Koke and use its trademark Koke in connection therewith. I will get that license and produce it as an exhibit to my deposition. And the Koke Co., of Texas, all the same are licensees for certain territory. I was in Atlanta in August 1, 1899, when Mrs. J. S. Pemberton signed a certificate of some sort. Mrs. Pemberton, on Aug. 1, 1899, in Atlanta, Ga., did sign this certificate (Defendants' Exhibit #66) which reads as follows: "To whom it may concern: This is to certify that my husband Dr. J. S. Pemberton was the originator of the formula for making "Coca-Cola," "Wine Coca," and other similar fount beverages; that Mr. J. C. Mayfield of Atlanta, was associated with Dr. J. S. Pemberton long before and up to the time of his death, and it was under my husband's own personal supervision and instruction that Mr. Mayfield was taught to manufacture these and other similar specialties. To my personal knowledge, Mr. Mayfield was an expert in the manufacture of both the above commodities long before the present Coca-Cola and Wine Coca companies were formed, and he has been at the head of the manufacturing dept. of one or the other of those companies ever since their organization. It is undoubtedly true that he is today the oldest and most efficient and experienced living man in the manufacture of those specialties

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and the most reliable expert on the subject." Signed: Mrs. J. S. Pemberton.

Q. Were you present when that certificate was signed? A. Yes, sir. [1211]

Mr. HIRSCH.—We object to that due to the fact that the witness saying so is hearsay, and Mrs. Pemberton saying it is so will be hearsay too. We have not the right to cross-examine the person who made the affidavit and we therefore ask that the entire question and answer be ruled out; in addition the witness appears to read from a printed copy.

Objections overruled and appeal prayed and granted.

Mrs. Pemberton turned the original certificate over to me after she signed it. It must have gotten lost at some of the printers I had some of these things printed. I did keep it for quite awhile, carrying it from place to place.

Mr. HIRSCH.—We object to that testimony on the ground that if he had original affidavit here it would not be competent testimony.

Objection overruled and appeal prayed and granted.

This printed copy is an exact copy.

Mr. HIRSCH.—We object to that as being irrelevant testimony, and it makes no difference whether it was an exact copy or not and move that the question and answer be stricken for incompetency.

Objection overruled and appeal prayed and granted.

A paper marked Defendants' Exhibit #67 is the

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assignment from the Murfreesboro Bottling Works to the Koke Co., of America, dated 28th day of November, 1911, and is the assignment for their registered trademark Koke.

Q. Before I leave this affidavit, state whether or not Mrs. Pemberton, the wife of Dr. J. S. Pemberton did in fact make the statement and declaration contained in that certificate on the 1st day of Aug., 1899, in Atlanta, Ga.

A. She did.

Mr. HIRSCH.—We object on the ground heretofore stated in regard to this affidavit and move that the question and answer be stricken.

Objection overruled and appeal prayed and granted. Defendants' Exhibit #28 is an assignment from the Birmingham Bottling Works to Mayfield & Mayfield of the trademark Dope and the business and goodwill connected therewith, dated May 6, 1913. Defendants' Exhibit #32 is a bill of sale and assignment of the trademark Dope and the business and goodwill connected therewith from Steve T. Mayfield and James C. Mayfield, trading as Mayfield & Mayfield, to the Koke Co., of America, dated the 26th day of December, 1913. That is [1212] my signature. After the assignment of this Dope to the Koke Co., of America, the Koke Co., of America, thru its agents, licensees, began and continued to sell Dope continuously. They affixed the name Dope to the packages and receptacles containing the product. They have continued up to the present time. A paper marked Defendants' Exhibit #68 is a certified copy

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of the testimony in behalf—of Benjamin Kent, in a proceeding in the United States Patent Office styled: H. C. Beerman, vs. Coca-Cola Co., interference #16,753.

Mr. HIRSCH.—You are just identifying these are you not, Mr. Littleton?

Mr. LITTLETON.—Yes, sir.

Mr. HIRSCH.—It may be shown that they are just being identified but not offered at this time. Defendants' Exhibit #69 is a certified copy of the testimony in behalf of the Coca-Cola Co., in the same case. Paper marked Defendants' Exhibit #70 is a certified copy of the opinion of the examiners of interferences in that same cause. I have not any of the old books or records of our business away back from the beginning up to date. All my old papers and records, et cetera connected with my Koke business were destroyed in Birmingham. There was a fire on first avenue back of the store, that backed in and got into our store on Morris Ave., on the back side and got into our old books and papers and we lost them in the fire. That was in 1907 or '8. We have advertised this product Koke. We have done a lot of all kinds of advertising. A calendar marked Defendants' Exhibit #71 is a specimen of the advertising of Koke. I could not say how many of those calendars we sent out but several thousand, though. A sign marked Defendants' Exhibit #72 that is another specimen of advertising of Koke. A hanger marked Defendants' Exhibit #73 is another specimen of advertising of Koke. A calendar marked

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Defendants' Exhibit #74 is another specimen of Koke advertising. Another calendar marked Defendants' Exhibit #75 is another specimen of Koke advertising. Another calendar marked Defendants' Exhibit #76 is another specimen of Koke advertising. Another calendar marked Defendants' Exhibit #77 is another specimen of advertising of Koke. A blotter marked Defendants' Exhibit #78 is another specimen of Koke advertising. A tin sign or hanger Defendants' Exhibit #33 is another specimen of Koke advertising. A shipping tag, Defendants' [1213] Exhibit #79, is a specimen of the shipping tag which we label Koke Barrels and Kegs containing Koke. A blotter marked Defendants' Exhibit #80 is another specimen of advertising Koke. Another blotter labeled Defendants' Exhibit #81 is another specimen of the advertising of Koke. A A celluloid card marked Defendants' Exhibit #82 is another specimen of Koke advertising. A card marked Defendants' Exhibit #83 is another specimen of Koke advertising. A black cap Defendants' Exhibit #39 is another specimen of Koke advertising. A celluloid card or hanger marked Defendant's Exhibit #84 is another specimen of Koke advertising. A rubber apron marked Defendants' Exhibit #85 is another specimen of Koke advertising. A fan marked Defendants' Exhibit #86 is another specimen of Koke advertising. A fan marked Defendant's Exhibit #87 is another specimen of Koke advertising. Another fan marked Defendants' Exhibit #88 is another specimen of

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Koke advertising. A countersign marked Defendants' Exhibit #90 is another specimen of Koke advertising. A knife marked Defendants' Exhibit #91 is another specimen of Koke advertising. A card marked Defendants' Exhibit #92 is another specimen of Koke advertising. A blotter marked Defendants' Exhibit #93 is another specimen of Koke advertising. A card marked Defendants' Exhibit #94 is a ticket which is good for a glass of Koke at a soda-fount, or a bottle, a free ticket we call them. We use them for advertising. I would not say when they were printed, exactly. We have been having them ever since they have been out, but that ticket may have been printed here. When they would get old or dirty we would burn them. Of course when we redeemed them or they were sent back we would have fresh ones printed. When they were printed we sent them out sometimes to our customers to hand out and sometimes to our traveling, who would distribute them. A card or ticket marked Defendants' Exhibit #95 is a calendar with free ticket attached sent out by the Dallas office of the Koke Co., of Texas. This is a calendar for 1912, this was gotten out evidently in 1911 ready to be distributed in 1912. A calendar Defendants' Exhibit #41 is another specimen of Koke advertising, this is a 1915 calendar, we are just getting them out. Another 1915 calendar [1214] marked Defendants' Exhibit #96 is another specimen of Koke advertising. A blotter, Defendants' Exhibit #97, is a specimen of Dope advertising. Another blotter,

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Defendants' Exhibit #98, is another specimen of Dope advertising. A cardboard hanger, Defendants' Exhibit #99, is another specimen of Dope advertising. Another card marked Defendants' Exhibit #100 is another specimen of Dope advertising. A calendar marked Defendants' Exhibit #101 is another specimen of Dope advertising. A calendar marked Defendants' Exhibit #102 is another specimen of Dope advertising. A calendar marked Defendants' Exhibit #103 is another specimen of Dope advertising. Another calendar marked Defendants' Exhibit #104 is another specimen of Dope advertising. Another calendar marked Defendants' Exhibit #105 is another specimen of Dope advertising. A calendar marked Defendants' Exhibit #106 is another specimen of Dope advertising. Another calendar, Defendants' Exhibit #107, is another specimen of Dope advertising. Another calendar, Defendants' Exhibit #108, is another specimen of Dope advertising. A calendar, Defendants' Exhibit #109, is another specimen of Dope advertising. Another calendar marked Defendants' Exhibit #110 is another specimen of Dope advertising. A large wagon umbrella, Defendants' Exhibit #111, is another specimen of Dope advertising; we had the same umbrella with Koke on them where Dope appeared here. A rubber apron, Defendants' Exhibit #112, is another specimen of Dope advertising. A ticket, Defendants' Exhibit #113, is a ticket which entitles holder to a glass of Dope, or bottle, any of our customers, that was sent out to our trade

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and traveling men to be redeemed by us at five cents each. Another blotter, Defendants' Exhibit 114, is another specimen of Dope advertising. Another blotter marked Defendants' Exhibit #115, is another specimen of Dope advertising. "The Southern Carbonator and Bottler," a magazine purported to be published in Atlanta, Ga., dated Dec. 5, 1914, Defendants' Exhibit #116, on page 163, is some more advertising of Koke and Dope. The older journals, we had here had our ad. in them and they have been misplaced, I just happened to have some of the recent issues. A copy of the "National Bottlers Gazette," a magazine published in New York, dated Nov. 5, 1914, on page [1215] 195 (Defendants' Exhibit #117 is some more advertising of Koke and Dope. A book called Adallis' Creed-American Merchants' Guide, 1913–1917, of Texas (Defendants' Exhibit #118) are some more of the Koke advertising. We have advertised continuously right along, and just happened to have a little of this left over, in the past. We have had *large* outdoor signs than we happen to have here, then we have had some banners sometimes tacked up, we have had almost every kind of advertising, I mean sold to this class of business. We have continuously advertised Koke from the time I began to make it up to date. All this advertising we had printed we sent out to our trade, and traveling men, and they tacked it up. We sent this advertising mostly in the southern states, our trade has been largely in the Southern States, but we have had customers outside the South-

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ern States. I have always felt that I have spent something like seventy-five or one hundred thousand dollars for advertising outside of 26 years of my time and that of my boys. We have never drawn a salary and what we made outside of what we need went to advertising our goods. I have advertised commensurate with my business; in other words, I did not have the money to push my business all over the country at once. This is not all the kinds of advertising I have put out. We had some match boxes, too, I do not see any here, that we distributed quite a good deal of and some little trays, of course we would buy this stuff for advertising purposes and send it out until it is fortunate we have got this much, but we sent it out as we got it. It is pretty hard to remember all those advertising novelties.

Deposition of J. C. Mayfield, Jr., for Defendants (Recalled).

J. C. MAYFIELD, Jr., a witness produced by the defendants in the above-entitled causes, being recalled for further examination, deposes as follows:

Redirect Examination.

Those are the letters I referred to this morning.

Recross-examination.

What I told the salesmen, when I went out, I told you I had copies of the letters. That is my answer to the question, though, and here is the Pemberton certificate. That is one of the letters I had reference to in my answer, one of the many. [1216] That is the only one I made an effort to find. I found

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the first and I came back and quit looking.

Mr. HIRSCH.—This is a letter produced by the witness J. C. Mayfield, Jr., in response to our request that he file the letters of instructions to his salesmen and which is offered as Exhibit #20 to complainant's testimony.

Deposition of J. C. Mayfield, Sr., for Defendants (Recalled).

J. C. Mayfield, Sr., being recalled for further examination, deposes as follows:

Direct Examination (Continued).

A Koke label, marked Defendants' Exhibit #119, is one used by the Koke Co. of Shreveport, La., is one of the labels with which we labeled barrels containing Koke syrup. A proof of a similar label, in red, white, and black (marked Defendants' Exhibit #120) is a proof of one of the labels that was used by the Koke Co., of America. These were printed and we would trim them around with the scissors, this happened to be one that was not trimmed. Defendants' Exhibit #121 is a label for the jugs, also a label that we attach to each and every invoice that goes out which states there are so many gallons. A label marked Defendants' Exhibit #122 is some labels I had printed myself for the office here. I do not know whether it was ever used or not. A label marked Defendants' Exhibit #123 is a Koke label and was used by the bottlers of Koke, that is the label we are using now. Defendants' Exhibit #124 is a shipping tag that we sometimes put on

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the small kegs, as well as barrels. We as a rule stencil them and then mark them, to be on the safe side, of it being delivered to the consignee. Defendants' Exhibit #125 is another Koke label. I found this label in the store here when I came to take charge. That was one that had been used by the office here before I came to take charge, perhaps put on the soda water. We have had various sizes and kinds of labels and have not adopted any particular size or shape. I have not any of the old labels which I used in Birmingham. After I came to New Orleans and took charge of the Southern Koke Co., I found some labels, these blue labels Exhibit #125, and I immediately discontinued their use, and had my men take them up wherever they could find them, I had new ones printed, Exhibit #123, and I sent those out to [1217] my trade and told them to use them instead of the other number. This product Koke has always been the same color from the time we began to make it up to the present time, and had the same taste substantially.

J. C. MAYFIELD, Sr., being recalled for further examination, deposes as follows:

Direct Examination (Continued).

I purchased something from W. L. Bidding of Sherman, Texas. A paper marked Defendants' Exhibit #126 is an assignment of the trademark, business, goodwill, et cetera, of W. L. Bidding's business, that correctly states what was assigned to me. A paper marked Defendant's Exhibit #127 is a certificate from the patent office of the registration

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of the trademark Koke in the name of W. L. Bidding, of Sherman, Texas, and that is what it purports to be, and what I bought of Mr. Bidding. A paper marked Defendants' Exhibit #128 is a certificate of registration of the name of Koke, of the trademark Koke registered by W. L. Bidding and registered in the name of the Koke Company of America as assignors of W. L. Bidding, this is the paper we received from the Patent Office. Mr. Bidding filed an application to switch his trademark or registered label there to a trademark. We had some proceedings in Washington, I filed an interference, but after it was filed I went back to Dallas, Texas, and to Sherman and saw Mr. Bidding and I realized he had done some advertising and popularized Koke a little bit in his section and it was the cheapest way out and I thought the most satisfactory for me to deal with him and so made a deal with him and bought out his interest. A paper Defendants' Exhibit #129 is a certificate of registration of the trademark Koke, registered in the name of the Murfresboro Bottling Works, that is the paper turned over to me, that I bought from them. A paper marked Defendants' Exhibit #130 is a certificate of registration of the word Koke, as a trademark in the State of Oregon, registered in the name of the Koke Company, Limited, of Shreveport, Louisiana, that is the registration of the trademark which I procured in that State. A similar document for the State of California is marked Defendants' Exhibit #131. I can identify that as the regis-

tration. [1218] A certificate of the registration of the trademark Koke for the State of Colorado marked Defendants' Exhibit #132. I can identify that as the registration from that State. Another document being a certified copy of the registration of the trademark Koke under the law of the Territory of New Mexico (Defendants' Exhibit #133) I can identify as being the registration from that state. Another document, Defendants' Exhibit #134, is a certificate of the registration of the trademark Koke under the laws of the state of Utah, I can identify that also. Another one, marked Defendants' Exhibit #135, is a certificate of registration of the trademark Koke under the laws of the territory of Arizona, I can identify that also. Another paper, Defendants' Exhibit #136, is a certificate of the registration of the trademark Koke under the laws of the state of Tennessee. Another, marked Defendants' Exhibit #137, is a certificate of registration of the trademark Koke under the laws of the state of Minnesota, I can identify that. Another, marked Defendants' Exhibit #138, is a certificate of the registration of the trademark Koke under the laws of the state of Michigan, I can identify that. Another, marked Defendants' Exhibit #139, is the certificate of registration of the trademark Koke under the laws of the state of Texas, I can identify that. Defendants' Exhibit #140 is a certificate of the registration of the trademark Koke under the laws of the state of Missouri, I can identify that. Defendants' Exhibit #141 is a certificate of

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the registration of the trademark Koke under the laws of the state of Oklahoma, I can identify that. Another, marked Defendants' Exhibit #142, is a certificate of the registration of the trademark Koke under the laws of the state of Indiana. Defendant's Exhibit #143 is a certificate of the registration of the trademark Koke under the laws of the state of Louisiana. Another one, marked Defendants' Exhibit #144, is a certificate of the registration of the trademark Koke under the laws of the state of Illinois. Another one, marked Defendants' Exhibit #145, is a certificate of registration of the trademark Koke under the laws of the state of New Jersey. Another, marked Defendants' Exhibit #146, is a certificate of registration of the trademark Koke under the laws [1219] of the state of Kentucky. Another, marked Defendants' Exhibit #147, is a certificate of registration of the trademark Koke under the laws of the state of Georgia. A similar document, marked Defendants' Exhibit #148, is a certificate of registration of the trademark Koke under the laws of Florida. Defendants' Exhibit #149 is a certificate of the registration of the trademark Koke under the laws of the state of South Carolina. Defendants' Exhibit #150 is a certificate of registration of the trademark Koke under the laws of the state of North Carolina. Another, marked Defendants' Exhibit #151, is a certificate of registration of the trademark Koke under the laws of the Commonwealth of Pennsylvania. Defendants' Exhibit #152 is a certificate of the registration of the

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trademark Koke under the laws of the state of Texas. Defendants' Exhibit #153 is a certificate registration of the trademark Koke under the laws of the state of New York. Another similar document (marked Defendants' Exhibit #155) is a certificate of the registration of the trademark Koke under the laws of the state of Nebraska. I secured the trademarks in the same name of the Koke Company of Shreveport with the understanding that they were to assign them back to me, and they did a short time after we got them. They were my trademarks and my business and I just took them out in the name of the company. These assignments of the trademark Koke et cetera, from the Koke Company, Limited, of Shreveport, Louisiana, back to me dated the 20th day of November, 1910, are the assignments back to me of the trademark of said registrations heretofore identified (Exhibit #156) these assignments are genuine and what they purport to be and are duly signed by the president of the company and attested by the secretary and the company was duly authorized to make those assignments at the time they were made. After the Koke Company of Shreveport went out of business, their business, goodwill, et cetera, was all assigned to me. I was the principal owner, stockholder of the Koke Company of Shreveport. A fan, marked Defendants' Exhibit #157, is another specimen of Dope advertising. Defendants' Exhibit #158 we attach to invoices, as they would go out. When the goods were shipped we attached that to the [1220] in-

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voice. A copy of the Southern Carbonator and Bottler of April 5, 1914, published in Atlanta, Georgia, marked Defendants' Exhibit #159, on page 92 of that publication is some more Koke and Dope advertising. It is a page of advertising. A sign, marked Defendants' Exhibit #160, is another specimen of Dope advertising. It is one of our signs, paraffin signs, marked Defendants' Exhibit #161, is another specimen of Koke advertising. Another copy of the Southern Carbonator and Bottler, marked Defendants' Exhibit #162, dated February 5, 1915, on page 91 of that publication is another specimen of the Koke advertising. A copy of the National Bottlers Gazette of April 5, 1914, marked Defendants' Exhibit #163, on page 58 is some more advertising of Koke and Dope. A ticket, marked Defendants' Exhibit #164, is a ticket that is good for a glass of Koke at the soda-fount or a bottle of it. The holder of it can get a glass by presenting the ticket. We used this in 1910 and '11 in Ft. Worth and Shreveport and other places I do not know; we sent it out promiscuously. A label, marked Defendants' Exhibit #165, is a label of our Dope, we used that. It was used on the soda-water bottles exclusively. A statement on the billhead of the Center Van Horn, Ltd. (marked Defendants' Exhibit #166), shows various items of advertising that were purchased and the amount paid for them that is a correct statement of the items purchased. That is one of the invoices we received. A statement dated September 1st, 1914, marked Defendants' Exhibit #167, is a bill from

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J. G. Wallister, for fans and caps, the Southern Koke Company purchased those articles. The Southern Koke Company, Limited, purchased the advertising on Exhibit #166. Another statement from J. G. Wallister, marked Defendants' Exhibit #168, is a statement representing the purchases actually made by the Southern Koke Company and is just what it states there, balance due on caps, and this other down there is a pencil memoranda showing goods bought in 1914, July 9th and August 21st. In another statement from the same company, marked Defendants' Exhibit #170, the articles mentioned therein were purchased by the Southern Koke Company, Ltd., and paid for about the date of that statement. In another statement from the [1221] J. G. Wallister Co., marked Defendants' Exhibit #171, the articles mentioned in that statement were purchased and paid for in this statement. The caps are caps that we gave to boys and advertising memoranda to wear on the head. All of it was advertising matter. At the time I instructed the bottler in New Orleans to discontinue the use of the label which consisted of a yellow label with Koke printed on there in red. As soon as I found out they were using that blue label, of course, I changed it here immediately and I noticed that Mr. Moore, W. McCarty Moore's name was on it, it occurred to me that he might be using a similar label in Dallas as he was president of that Dallas office. I wrote him and told him if he was using the label like that, I wanted him to discontinue its use at once and sent

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him a sample of the yellow label I was putting out, and he told me he had given instructions over there—

Mr. HIRSCH.—I will object to anything that anyone said, Mr. Mayfield, as being hearsay evidence.

Objection overruled and appeal granted.

He followed my instructions. I was there a short time afterwards, I think and they had discontinued the use of it. A looking-glass with the quotation "Drink Koke" trademark on it. (Defendant's Exhibit #172) is another specimen of Koke advertising. A dispensing bottle marked Defendants' Exhibit #173 is a sample of the dispensing bottle purchased by us and used by the Koke Companies, that was furnished dealers. I did not pick out the design of dispensing bottles, just sent them, that is the local representative of the Illinois Glass Works here, gave him my label and told him I wanted a dispensing bottle one of their regular stock bottles and wanted my Koke on there, and that is the bottle they shipped. That is the cheapest bottle they had.

Q. When you bought that bottle was anything said to you by the representative of the Illinois Glass Works or glass company, about that being a bottle used exclusively by the Coca-Cola Company or whether it was a bottle used generally, or anything of that sort?

A. Used generally.

Mr. HIRSCH.—I object to anything the representative said as being hearsay evidence and move that it be stricken.

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Objection overruled and appeal prayed and granted.

After the completion of the [1222] taking of the complainant's testimony in these cases last summer I received a letter from T. L. Boswell, one of their witnesses and one of their numerous detectives. After I got the letter I mailed it to you Mr. Littleton, at Chattanooga.

Q. Now, I have been looking for that letter I cannot find it. If I find the letter I want you to allow me to produce and file it in this case.

A. I certainly will. A gentleman represented to be G. Walton, called on me in the summer of 1913. He represented himself to be a capitalist. Mr. Cheevers brought him there. Mr. Cheevers evidently from his talk impressed him that Koke was a big thing and he got the idea of investing some money in it, and he brought him down there to talk it over with me. I told him that the New Orleans office did not have any stock for sale . I had taken charge of it and was not going to sell any more stock. I do not remember a detective by the name of George H. Wilkins from the office of Mr. Edward S. Rogers in Chicago. I had my conversation with G. Walton, in our office, 807 Howard Avenue, the Southern Koke Company Limited. There was present during the conversation that I had with this gentleman, Miss E. N. Daly, my wife happening to be in that morning. She was there and a young man that represented a typewriting company here. I have forgotten the name. I had just bought a new type-

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writer from him and he had brought it in. He, my wife, Miss Daly and myself were in front of the office and this capitalist or detective as it turned out to be took our photographs, he had a kodak with him and said he wanted to take our picture. Miss Daly was the stenographer in the office at the time. In the course of the conversation I did not state to this detective that I was not doing any advertising at all. I did not tell him this or anything like it that the Coca-Cola Company had spent millions of dollars advertising and that every dollar they spent helped me sell Koke. I did not tell him that I understood a lot of people asked for Koke when they wanted Coca-Cola but I could not help that. I did not tell him that our bottles and labels were the same as the Coca-Cola and a lot of people thought it was Coca-Cola, or anything like that. I did not at any time call this fellow Cheevers to my office and get him to make a statement [1223] about his connection with the Southern Koke Company Limited. I did telephone him to come to the office that I had a letter from Mr. Scott's brother and I told him what Mr. Scott said, when he would be here. I had written up something for Mr. Cheevers to sign, and while he was there I mentioned that to him. He did not sign it however, he said he would think it over. I actually had a letter from Mr. Scott's brother, I showed it to Mr. Cheevers. He did not deny that the statements which I had written out contained the actual facts, he said he would think it over. He seemed to be a little miffed on account of not being

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on the pay-roll of the Southern Koke Limited, and it seemed that he did not know that they had ever done anything for him and he did not see why he should be doing for the—

Mr. HIRSCH.—I object to what anybody said as being hearsay and move that it be stricken out.

Objection overruled and appeal prayed and granted.

I told him that it just recited facts and there was no reason why he should sign it, I would not force him if he did not want to. I have forgotten exactly when that took place, it seems to me it was the latter part of 1913 or the first of '14, it was after he had severed his connection with us, I believe, it was in 1914, I am not positive about that date. I believe it was after he brought this Coca-Cola detective, G. Walton, *alias* George H. Wilkins, up to our place of business. Defendants' Exhibit #174 is a bottle of Coca-Cola that I bought on the market in a little grocery store, George Jacobs, Howard Avenue and Barrone Streets in the city. I bought that last year in the summer sometime. I identify that as the bottle I purchased, I had the stenographer write that off and signed my name to it as having bought it from George Jacobs. I pasted it on the bottle. Defendants' Exhibit #175 is a bottle I bought at the same place at the same time. Defendants' Exhibit #176 came from the same place at the same time Mr. A. B. Littleton and I went down there together when we purchased them. Defendants' Exhibit #177 is a bottle of Koke, bottled by our bottlers

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here, now since I notice the date on this card this must have been the same and my recollection is that we bought this from Jacobs, well, it is not dated, I sent the young lady stenographer out to buy this while [1224] I went down to buy the other to show the difference in the two packages. That is the style of bottle we used altogether in various places. Defendants' Exhibit #178 is the same thing, same time, and same place. Koke has never been bottled in New Orleans in bottles other than this bottle that I know of. I have never seen or heard of Coca-Cola being sold on the market in New Orleans, in this territory in any splits bottles similar to Exhibits #177 and 178. The bill of complaint in this case makes the Koke Company of Arkansas, a defendant. A charter was taken out for a corporation of that name, under the laws of the state of Arizona. It was not a going concern but we did organize. We may have mauufactured or sold a little bit of Koke or Dope but not very much. That corporation is not now in existence. The Koke Company of Oklahoma, I do not believe, was ever organized. The Texas office secured that state and was going to put an office in the state. I believe they were going to secure a charter, in fact, I know they did. They may have held a meeting and organized but I have no recollection of any stock being issued because they decided afterwards that we would supply the Oklahoma territory from the Dallas office. That corporation is not in existence. No company in which I am interested or connected ever had a

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place of business for manufacturing our product at Pine Bluff, Arkansas. Neither of our products K-o-k-e or D-o-p-e was ever manufactured at Pine Bluff, Arkansas. I have heard there was a Pine Bluff Bottling Works.

Mr. HIRSCH.—I object to what he has heard as hearsay testimony and move to strike.

In fact I have seen some of their labels, C-o-k-e, Coke. I have no connection with that concern whatever. None of our companies had any connection with them. This Central Koke Company of Chattanooga, Tennessee, is the agent to the Koke Company of America, selling agent, licensees, they get their extract for making their syrup from St. Louis, Van Dusen, I mean to say. We had some trade all over Texas for Celery-Cola at the fountain, in Dallas and other places and my traveling men informed me—

Mr. HIRSCH.—I object as hearsay to anything that he was informed by his traveling men and move that it be stricken.

Objection overruled and appeal prayed and granted.

Mr. LITTLETON.—Go ahead.

That some of our customers, the reason they were not buying, of course, we were building [1225] and did not have so much trade in the beginning that they were serving the Coca-Cola or whatever Cola beverage they had and dashing a little celery in it to give it a little celery flavor. I went myself to the Owl Drug Store in Dallas, Texas, who I knew did not buy any Celery-Cola, and told him to give me Celery-

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Cola. He gave me a Coca-Cola and dashed a little celery in it and dashed a little too much and made it a very objectionable drink. There are a great many other cola drinks besides our Koke and Dope on the market to-day to my knowledge. I know of quite a number and have heard of at least a couple of hundred.

Mr. HIRSCH.—I object to what he has heard and move to strike as hearsay.

Objection overruled and appeal prayed and granted.

I can enumerate some. There is Wine Cola, Eli-Cola, Wise-Ola, Afri-Cola, Konut, Coca-Nola, Pepsi-Nola, Lemon-Ola, Cherro-Cola, Nifti-Cola, True-Cola, Cola-Nip, Star-Cola, Diehls Cola, no. not Diehl's,—Gerst's Cola, and Mar-Cola, Farri-Cola, Luck-Ola, Mint-Cola, Lime-Cola or Lime-Ola, I do not know which Wine Cola was a soda-fountain syrup since 1893. All these different beverages I have mentioned are all the same color. I have drank a good many of them. Some of them have a little different taste, it is a pretty hard matter but of course the difference comes, the same piece of goods will vary in flavor but you might say they are all uniformed flavor, some little variation on account of age, maybe. The color of all these beverages are about the same as our product Koke and Dope. I never saw a cola beverage that was not the same general color, or the same general taste. I painted our barrels red because that is the color that Dr. Pemberton used, we naturally took over that color, and

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further for the fact that it is the cheapest paint you can buy and one coat is sufficient for painting a barrel, there is no reason why we should change. The cola drink manuacturers paint the barrels and kegs containing their syrup red except, the Gay-Ola; in the last year or two I notice their's is a little different color, I have seen one or two possibly, but all the rest are red packages and containers. (A number of crowns used on various cola beverages, Exhibit #179.) I have seen this Cola-Queen, I would not say for sure, about the Arrow-Cola; I have seen this Cola-Queen, this Pepsi-Cola, **[1226]** I have seen Coca-Cola, and I have seen the cola and I have seen Koke. And Cherro-Cola, I have seen the Ali-Cola, I do not remember about the Candy Cola, Cola-Nip, I have seen that. Rye-Ola I have seen; Peach-Ola, I do not believe I have seen. Gay-Ola, I have heard of that; Mint-Ola, I am not right sure about seeing it; or the Cola Queen, I have seen Luck-Ola. I do not know about that Pure Cola, but I do not remember seeing the goods put up, I do not remember Carson's Cola, I remember the Celery Cola and of course the sarsaparilla. We have tried to keep the shade of red we have painted our barrels from time to time uniform, there might have been a little variation but nearly always the same color, uniform red. Neither when I was in business for myself, nor since I have become the executive officer of various corporations ever instructed at any time our salesmen to sell Koke and Dope, as and for, Coca-Cola. I told them always to sell our goods on its merits, talk it and push

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it and I contended we had the best goods on the market and never to offer as a substitute or advise anyone else to, because I was advertising and pushing my own product. If any one ever did sell Koke and Dope as and for Coca-Cola or substitute it for Coca-Cola, it was not done with my consent and knowledge, acquiescence and approval. A printed Patent Office copy of the certifiate of registration of the Trademark Steiger's Cola, Malted Tonic, Defendants' Exhibit #180, is what it is.

Mr. LITTLETON.—I now tender and offer in evidence on behalf of the defendants in the above-styled case or cases mentioned in the caption, all exhibits identified by the witness on his direct examination beginning with #61 and numbered consecutively down to and including Exhibit #180.

Mr. HIRSCH.—I object to the entering of exhibits, in bulk, because there are 103 exhibits, and I wish to object to some of them but I cannot unless there is a stipulation that I can object to those later.

Mr. LITTLETON.—You can take advantage of that and object any time you want to.

Mr. HIRSCH.—That is all right.

Mr. LITTLETON.—And if the witness has identified any other exhibits not included in these numbers heretofore offered they are offered in the same manner.

Mr. HIRSCH.—Yes, sir; it is understood on the record that [1227] the right to object is specifically reserved.

Mr. LITTLETON.—Yes, sir, I also want to tender

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and offer in evidence at this time the exhibits beginning with #55 and ending with #60 and all other exhibits identified by the witness J. C. Mayfield, Jr., on his direct examination as evidence on behalf of the defendants in the above-entitled cause.

Mr. HIRSCH.—We reserve the same right to object to each and every and all of the exhibits tendered.

Mr. LITTLETON.—There was one more question I wanted to ask Mr. Mayfield, I was about to overlook.

Mr. HIRSCH.—Now, Mr. Littleton, it is understood about that reservation now.

Mr. LITTLETON.—Yes, sir.

Mr. LITTLETON.—That is in the agreed order, anyhow, that you can make any objection at the hearing to the irrelevancy or incompetency.

Q. Mr. Mayfield, Mr. Asa G. Candler testified that you called on a man by the name of Mr. W. N. Hayne, who was in business in Atlanta, Georgia, and tried to sell him Yum-Yum, that you stated it was made by the Coca-Cola formula and that Mr. Hayne replied to you that he did not want any Yum-Yum, and he required you to sell him Coca-Cola and that he required you to bill your product as such that the witness Asa G. Candler got the bill and then got after you about it and also about another instance of the same kind and that the witness Asa G. Candler—no, that you told Asa G. Candler that you had a barrel of Coca-Cola that you had gotten in exchange for something and that you were selling it out and would

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quit, that you told him, the said Asa G. Candler, that you were not manufacturing it but just got that barrel in exchange; state whether or not anything like that occurred? A. Never.

Cross-examination. [1228]

Q. 433. You stated, Mr. Mayfield, on your direct examination that Doctor J. S. Pemberton made known the formula for Koke or Coca-Cola to me, he got his formula book and called it over to me word for word; when was that?

A. That was in January, just after he had signed the contract.

Q. 434. Of what year? A. 1888.

Q. 435. That was the Coca-Cola formula?

A. It was.

Q. 436. You are sure of that? A. I am.

Q. 437. Absolutely? A. Absolutely.

Q. 438. No possible mistake about that?

A. No, sir.

Q. 439. Now, you stated that he made it known to you from a book, did you see this book?

A. I did.

Q. 440. Did you read from it? A. I did.

Q. 441. What was at the top of the page, if anything? A. Just Coca-Cola formula.

Q. 442. Just, "Coca-Cola formula" was at the top of the page, and he read it off to you?

A. He read it off to me and I copied it.

Q. 443. You made a copy? A. I made a copy.

Q. 444. In Doctor Pemberton's presence?

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A. Yes, sir.

Q. 445. And with his consent? A. Sure.

Q. 446. There is no possible doubt about that?

A. No, sir.

I do not know where that book is now. I do not believe I have seen it since that day. He just read it to me and I copied it and then **[1229]** he read it back to me to see if I had it identical with his copy. The book of Dr. Pemberton's was a small book, a memorandum book. I do not know about the back, it was hinged on the side of the sheet is my recollection. Not the size of a journal page but it opened that way. To the best of my recollection it was a book about 4 by 6.

Q. 462. And you regarded it, and Dr. Pemberton regarded that formula, that Coca-Cola formula as a secret formula? A. Yes, sir.

This was in January and he died that same year, along in the summer. Some time in January, 1888, we commenced making the product according to that formula. We have discontinued the use of coca in our formula, there is no cocaine in it, absolutely no chance for anything to get in there for we do not use coca leaves in any shape. We do not use the extract of coca. There is now no form of the coca leaf connected with the drink at all. The cocaine is left out and we added something in lieu thereof, that has practically the same flavor as the coca leaf. We added Imperial China tea, flavoring extract. That is the only change. Outside of those two changes

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there is absolutely no change from the formula that Dr. Pemberton handed over to me in January, 1888. I made a purchase from the Murfreesboro Bottling Works. I had our negotiations with, I believe, Mr. Hudgings, and his partner was, I think Christian Hudgins. There were two, and one Hudgins I did not get to see was out of the city, but he did join in the transfer. They were bottling soda-waters of all kinds, running an ice plant and coal-yard, is my recollection, making and selling a product which they labeled and sold as Koke. I could not say how large the bottling business was, it was quite an up to date plant, and the ice plant was all connected with it. I was there only one day and did not see them shipping syrup. I do not know whether or not they did ship syrup, they were only bottlers there in Murfreesboro. They had shipping cases, I suppose they were doing a shipping business. Shipping soda-water out of the city. Soda-water business as a rule is necessarily a local business. They called over one or two customers is my recollection, not very many outsiders that they had sold syrup to. I believe one customer was in Kentucky, who had bought Koke syrup from the Murfreesboro Bottling Works. He told me of a customer, it was [**1230**] not more than one or two and I believe it was a party that he had given permission to use the trademark Koke, I do not know that he sold the syrup. I do not know that he sold him anything, but to my recollection now he gave him permission to use the trademark Koke

for awhile. I do not remember where the party was. I was only there part of one day, and bought the trademark. I do not think I took over anything but the trademark registration certificate. I omitted the coca leaves out of the formula just after the pure food act went into effect. I added the Imperial China tea just after that. I copied the Coca-Cola formula on, my recollection is it was a memorandum book, about 4 by 5 or 4 by 6. I think it opened on the side, I am not sure, it must have been a new book. I put other formulas in that book. All that we bought, we copied everything right then and there, complete copies of everything he had. I would not say how long it took, I made them all at one session. That book was pretty valuable then. I have not now got it. I have not seen the book in eight or ten years. I do not remember the last time I saw it. The second time I came back to Atlanta was about 1899. I met up with an old friend Mr. Brittian, and at that time I was experimenting a good deal with the drinks of this kind, and worked out a drink which was afterwards called Celery-Cola. I had been working on Celery-Cola four or five years prior to that. It had been on the market very little, I may have sold a little here and there. I had labels for it at first, it seems to me the first labels I had was just before the Atlanta Exposition. In 1900 was when I started bottling it. I started it out as a fountain drink, four or five years prior to that, in '94 or '95. I told Mr. Brittian I had a Celery-Cola. He liked the name

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and liked the drink and we made a deal based on Celery-Cola. If I testified in my direct examination that I was simply experimenting with it and Mr. Brittian, I told him about the adoption of the name of Celery-Cola in 1899 or 1900, I am mistaken, I may have stated that I commenced, but I do not know when I commenced but I remember just before the Cotton States Exposition. I stated this. "Yes, sir, I met an old friend of mine that lived in Birmingham, I told [1231] him what I was doing. I was undecided whether to stay in Atlanta or go somewhere else and he and I made a business arrangement whereby I was to move to Birmingham. That was in '99. I had been experimenting in other things, making other beverages, and I decided on Celery-Cola. I thought it might be a happy thought to make a celery beverage and call it Celery-Cola and I explained it to him and he said it would be a winner." That conversation I said I had with him and I said I had made and sold it prior to that time. I had sold it in Atlanta, the first I remember was just before the exposition in 1895. I had several customers that liked it, they liked the celery flavor. I had labels for it at that time. The syrup was in a bottle. I do not suppose I had sold more than a half gallon, just started and I labeled that bottle with a printed paper label. I cannot remember who I sold Celery-Cola prior to the Exposition in 1895, it was mostly small fountain. I did not sell that Celery-Cola long prior to the Exposition. If I swore in

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the Patent Office that I had made and sold Celery-Cola since 1893, it was a little clearer to my memory then than it is now, I made it way back there in '94 and '5 maybe '93. I was in Atlanta at the time. The name of our concern at the time I began making Celery-Cola was the Pemberton Medicine Company. The trademark has been used continuously in the business of said corporation and the business of its predecessors, J. C. Mayfield, since about 1893, just before the Exposition. I was not pushing Celery-Cola then very much, Koke was what we were pushing. I did not say anything about the Pemberton Medicine Company making Celery-Cola. I forgot it. They were not pushing the soda-fountain beverages Wine Coca, in 1893. The Pemberton Medicine Company always sold it in the Wine form. The soda-fountain syrup started with Mr. Ealey is my recollection. (Complainant's Exhibit #21.) This is Pemberton's original Wine of Coca, this must be the wine instead of the syrup back there, it must be that some of the soda-fountain people, I have a faint recollection of their selling wine as a drink. That is good for a glass of Wine of Cocoa. It was not so much a medicine as a tonic. It was not the original Wine Coca, that was a tonic and put up in quart bottles. It retailed at a dollar. I do not know how many glasses there were in a quart. I know I have just heard that they sold it. I do not know what they did. I [1232] think it was a full quart. The Pemberton Medicine Company was getting out the Wine Coca in wine form, I have no recol-

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lection of their having made any syrup over there. I do not remember the ticket. It seems to me like we got out tickets of Koke. I have none of those at that time, gotten out by the Pemberton Medicine Company. I sold this Koke to Mr. Tyner of the Tyner Drug Co., Atlanta, I think. Tyner was the man I met, and I sold him later on. I do remember selling him, he began right along there '97 or '98 or '99. I sold him the product in extract form, delivered mostly in gallon jugs, labeled Koke. Printed, block letters "K-o-k-e" and there I explained how to mix it with simple syrup. I cannot tell from whom I bought the labels, or who printed them, it was printed in Atlanta. It was a white label. I have a recollection of other customers but do not remember the names. There was an Italian, right close to my place of business that handled it right along. In Atlanta I cannot recall any more, but can remember some outside. I sold a man, commenced with him in 1888 with Koke. In Gainsville, Florida, old Judge Bell, he was postmaster there. I sold him for several years. I do not know just the last I sold the judge. I do not know why he quit. I think possibly his death stopped it. I also sold Mr. Groves of Ocalla, the Mr. Groves that testified in Atlanta, and I had other customers and I tried to find them, some of whom I would have a recollection, and they would be dead. Whether Mr. Tyner is living I do not know, I do not think he is now. I sold Edmonson Bros., I do not recollect when they started, but they bought right up until 1901, two and three, the

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Mr. Edmonson that testified in Atlanta, was one of the brothers. Edmonson was a good customer. I was in Birmingham and Nashville along there and was also in St. Louis, first one place and another. I remember shipping some from Birmingham, that was Koke. It was not the syrup, it was the Koke extract. Now, along there Celery-Cola and Koke were interwoven, here and yonder and it is pretty hard to remember just who is who. I did sell a man in Atlanta, extract and I believe his was Celery-Cola, an old bottler there named Harris. I think his was altogether Celery-Cola, and I had men, but I do not remember of making but one or two trips myself **[1233]** over there to Florida, Gainsville and Ocalla. I cannot recall right now, but we did have we were bottling goods in Birmingham and after I took hold there in 1903 and along there we had quite a lot of railroad contractors that we sold to and some local trade, bottled goods and we had—I am trying to think, it is pretty hard to get back there. I would love to think of them. I cannot recall it seems to me like I shipped to Sutton Bros., of Mobile from St. Louis. That must have been in 1901 or 2 or 3, maybe. That was Koke. And I sold a man, shipped him goods in St. Louis in 1900, it might have been the latter part of '99, it was either '99 or 1900. A fellow named Bob Baxter went to St. Louis to go into this line of business from Atlanta. I do not know what has become of Mr. Bob Baxter. He was formerly from Wilson, Missouri, he used to be a tobacco drummer. He knew of my Koke and Celery-Cola

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syrup and decided he would go back up into the neighborhood of his old home and go into business. That was Koke. At this particular time, this was in 1900—he did go back later and handled Celery-Cola. That is so far back it is largely a mail order business, we would send out and get a list of customers that is a list of dealers and I would mail them an ounce of my compound, with instructions to mix it with ten ounces of simple syrup. That made the goods ready for use. That usually brought an order, my terms were cash to the trade. Lots of people we shipped to that way. Some reordered, some may not. We did largely, quite a mail order business. That was in the extract. I did not go into the syrup business very much until 1909 or '10. Largely into the Koke syrup business, that was when I had trouble with Celery-Cola and got a black eye, with cocaine in it, the government found it and then I thought I would naturally have to overcome that and I pushed Koke. I would not say Koke had been our best seller up until then, we sold more Koke possibly from '88 to 1900, Celery-Cola for several years I believe was in the lead. Up to this suit and since then we have done more Koke business because we have pushed it. I decided to go to Birmingham when Mr. Brittian came along is about the best of my recollection that was around 1899. Mr. Brittian was my associate, **[1234]** I believe we styled it J. C. Mayfield Manufacturing Company. That is the first business in Birmingham, Alabama.

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If there was a license taken out in the name of the J. C. Mayfield Manufacturing Company, to do business, Mr. Brittian attended to that. I do not know that there was. We bottled along in the last of the year, maybe the first of 1900, but a little cheap Hutcheson stopper machine, besides bottles I did myself a little trade back in Atlanta that I took care of what time I was in Birmingham, and I had Mr. Brittian go around Birmingham with this bottling business. We did business in this bottling business under the name of J. C. Mayfield Manufacturing Company. I continued with that Hutcheson stopper probably a year, maybe not that long. Mr. Brittian bought the bottles, I do not remember who he bought them from. He was bottling Celery-Cola and not bottling Koke. I made Celery-Cola compound and extract. I made Celery-Cola syrup, nobody has ever made it outside of myself, the boys, and Van Dusen. Mr. Brittian or some of the hands made the simple syrup. I would not say that he did not bottle some other flavors. I do not believe he did bottle Koke. At that time I do not think anybody in the country was bottling Koke, or any other cola beverage. I think that was about the time I started. Mr. Brittian and myself continued in that bottling business under the name of J. C. Mayfield Manufacturing Company a very short time. Maybe less than a year. We started in '99, he may have made the change in 1900. I left that with him, because I was in Nashville and St. Louis. I left before Mr. Brittian ceased. While I was in St. Louis

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the Brittian-Mayfield Manufacturing Company continued bottling, but they had discontinued before I came back to Birmingham, using the Hutcheson stopper. They were not making extract in Birmingham. I stayed in Birmingham something less than a year at that time. I went to St. Louis and went into the extract business, that was really my own business. I had not been to St. Louis before. No one else was interested in that business at that time. This man Baxter—we did not perfect the deal. When I first went to St. Louis I made Koke and **[1235]** Celery-Cola, I did not bottle either one of these drinks there. Mr. Brittian was the first man to bottle Celery-Cola and no other man up to that time had bottled either Celery-Cola or Koke. That is my recollection. I do not recall the name I used in St. Louis. Possibly I used the J. C. Mayfield Manufacturing Company stationery, if I had any along. I just scratched Birmingham and put St. Louis. I had some of the stationery in Birmingham. Mr. Brittian had that printed. I do not remember what was on it. This agreement with Mr. Baxter was not perfected; he never went in with me. I did not employ anyone in St. Louis. I traded with Mr. Baxter and made some extract in his home. I had a few customers there that I supplied to them. It was summer and I was working it myself. I was not there very long, a few months. I went from St. Louis to Nashville. I went in business in Nashville, immediately after going from St. Louis. That too I

think was the J. C. Mayfield Manufacturing Company. A short time after I was there as I stated in direct examination, I promoted an oil company. I do not remember whether I went into any other business besides the oil company. I was never with the Tennessee Carbonating and Supply Company. I do not think I was president of that concern. If I was I was a dummy I do not remember having any connection with it at all, but I may have. (A charter of incorporation, Complainant's Exhibit #22.) It seems to me I was one of the incorporators of that, but I do not remember having put any money into it. They bottled some of my specialties. I believe they bottled Celery-Cola; they did not bottle Koke. The first manufacturing I did in Nashville was at Deihl and Lord's bottling plant, they bottled the Celery-Cola. I made my extract there. I made Celery-Cola, Pepsi-Nola, Koke, and I believe I made Vigo, that was in the place of business of Diehl and Lord. J. C. Mayfield Manufacturing Company I believe that is the style I used there, I do not think that was incorporated. I must have had stationery there. I do not remember what was on the stationery. I was getting out Celery-Cola and Koke in extract form in that place. I would say that was along in 1900 or '01. I was at Diehl and Lord's place a few months. It seems to me I went from there over near the Tulane Hotel and rented a basement. They did [1236] not have much room there at Diehl and Lord's Place. I have forgotten the name

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of the street. I stayed there a short time but my office, all along then I had the oil companies going, I had an office in the Vanderbilt Building, and I was doing my manufacturing and attending to the shipping, that is expressing of my extracts over the country doing a mail order business, and it was most too far, I thought from my office and I moved it to the rear of the Vanderbilt Building and I left, that must have been along in 1902. In 1902 I went to the oil field to look after the putting down of the wells and pushing up the business there for a while. That was in Southern Kentucky. Wayne County was one, outhern Kentucky adjoining the line of Tennessee. The headquarters were in Nashville. I made my headquarters where the wells were, for awhile. I was in and out of there for three or four months. My son took charge and I believe in fact I know that he moved out from the Vanderbilt Building over near the river to, I believe Market St. We were making extracts. We might have had a few syrup customers. My sons worked the City. They may have sold some syrup. I was in the oil field sometimes in St. Louis and sometimes in Birmingham. #23 seems to be a letter dictated by my son and signed by the J. C. Mayfield Manufacturing Company. I stayed around Nashville going in and out of Nashville to my oil wells up to about 1903. I do not believe I had anybody working for me in the extract business at Nashville, Tennessee, during that time. My son came and worked with me. While

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he had charge he had nobody working for him, that I know of. In 1903, I went back to Birmingham. This Brittian—J. C. Mayfield Manufacturing Company was on Morris Avenue and a little while on South 20th street—no, I would say he was on south 20th street—I was not there when Mr. Brittian had his plant; he sold it and the latter part of 1901 or '02, when I first went to Birmingham he was on Morris Avenue; I am not sure of the number. That was the J. C. Mayfield Manufacturing Company on Morris Avenue. I had my place in there, when I was there. I made it anywhere I happened to be. Sometimes I went back and made a *litt* and if I did not have time to go I would ship it. I do not remember that I had a bottler anywhere that bottled Koke. When I got back to [1237] Birmingham in 1903, Mr. Brittian had sold out in Birmingham and was in St. Louis. I do not know who worked for Mr. Brittian at the time he was bottling Celery-Cola in Birmingham. Mr. Brittian who was in Birmingham left there while I was in Nashville and went to St. Louis, that was in 1901 or '02. Mr. Brittian went into the Celery-Cola business in St. Louis. I believe he used the same name there as in Birmingham, J. C. Mayfield Manufacturing Company. He continued the business there, I would say fifteen months, along there, somewhere, a short time, that would take it up to about 1903 or '4. I could not tell you what he did after that. I don't believe I have seen Mr. Brittian since. I do not know any-

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body that was employed by him at St. Louis, Missouri. I was not there but once or twice. I have not had any other connection with him in a business way. When I got back to Birmingham from Nashville in 1903, I think Mr. Brittian had sold out lock, stock and barrel to a man named Fox. Fox bottled Celery-Cola and my recollection is that he bottled some Koke. I believe he called it the Celery-Cola Bottling Company. I would not be right sure about that. I would not be right sure, but I rather think he bottled Celery-Cola, Koke, and Pepsi-Nola. I had a pepsi-nola drink. I do not recall seeing any labels of Koke around his place of business. I do not remember who was working in Fox's place when I got back there. I do not remember the name of a single person. I saw some Celery-Cola bottles. I think he was using a bottle with a crown on it. I could not say what that crown had on it. That was my first trip down there for quite a while. It was not a going concern when I was there. I could not say that I saw any crowns with Celery-Cola or Koke on them. I remember seeing labels on the window, Celery-Cola that is as far as I can remember. I don't remember seeing any Koke labels. This Fox Celery-Cola Bottling Company was located in Birmingham, near the postoffice somewhere, not very far from there. It was not the same place Mr. Brittian had, Brittian was on Morris Avenue. In referring to the Fox Celery-Cola Bottling Company I simply used Fox to distinguish it. One reason I went, Mr.

(Deposition of J. C. Mayfield, Sr.)

Fox owed me quite a little money for extracts I shipped him. I stayed there thinking I would get something out of it. [1238] I do not think I got a penny. There was a mortgage on it, a loan and the bank had to close it all up there, that is the best of my recollection. It seems to me, to the best of my recollection a man named Ensley and Moody, I believe are the parties who bought it. Mr. Schuyler and I figured on going in and buying it but we did not have but a short time to adjust it. In St. Louis I contracted, I had a licensee there, they continued under the name of Celery-Cola Company.

Q. 814. In Nashville, who did you leave there?

A. My son was there.

Q. 815. And he was making what?

A. He was looking after the shipping business at Nashville.

Q. 816. He did not make up anything; you sent it from wherever you were?

A. Yes, he did some manufacturing.

Q. 817. Say why you went to Birmingham to see this condition in regard to the Fox Celery-Cola Bottling Company, your son, Mr. Steve Mayfield, remained at Nashville and did some manufacturing, manufactured these extracts, both Koke and Celery-Cola? A. Yes, sir. [1239]

The men that bought the Fox Bottling Company out were Ensley and Moody, I cannot give you their initials. I have not seen Ensley in eight or ten years. I have not seen Moody in four or five years.